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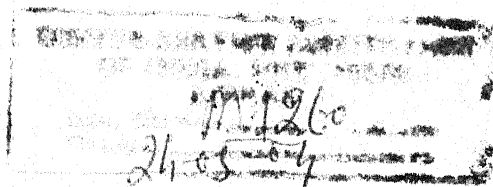
BY

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JOHN BASSETT MOORE
A JUDGE OF THE PERMANENT COURT OF
INTERNATIONAL JUSTICE



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CHAPTER I.

AIR POWER.

Air power.—The very term "Air Power" is itself an admission that a review of war rights in the light of the new conditions is necessary; for air power is simply the power of a nation possessing an air force adequate to the calls of its national policy to support that policy in the last resort by forcible methods which, being new, are not regulated by any traditional law and custom of war. The unique and characteristic feature of those methods is their direct and penetrative nature and it is this which makes the change which has been begun a revolutionary one.

Its revolutionary effect.—It is now a commonplace to say that the conquest of the air must mean as great a revolution in warfare as that brought about by the introduction of gunpowder or of steam. These very words were used by Colonel Capper as long ago as October, 1910, when he was giving up command of the Balloon School at Farnborough.¹ It is not merely that man's ability to fly has helped to dissipate the fog of war, to reveal what is happening behind the enemy's lines, to alter the technique of fighting as we know it; nor yet is it only that it deprives an island nation of the protection which its "silver streak" formerly afforded it and that it makes the sea, as a defence, as obsolete as the wall which the emperor Hadrian built in the mistaken belief that it would be possible by such a means to keep Southern Britain permanently free of Scotsmen. The change is far more fundamental and revolutionary than that. It is one which goes to the very root of war itself.

A gradual revolution.—To understand the nature of the change it is necessary to consider what, in essence, war is. First, however, it should be explained that the revolution, great and striking as it is, will not be a sudden one in its effects.

¹ See *Flight*, 15 October, 1910.

It will manifest itself gradually, perhaps slowly. One remembers how the cross-bowmen co-existed for a time with the musketeers in the middle ages, and how, less than a century ago, the British Fleet still used sail long after the introduction of steam at sea. The period of transition in the great epochal changes is often a long one. Though air power has come, battle-fleets will still put to sea, armies will break camp for war, for many a long day yet. The time for consigning the older arms to the scrap-heap has not yet arrived.

Nevertheless, history has started upon one of its great marches and the old order of things is doomed already. No doubt we shall still have battles by land and sea, the shock of contending armies and fleets; and great air combats which will reproduce some of the quality of the fighting of the past must always remain to remind us of the older war. But all these things will be only survivals. More and more war will take on a new character. Whether that character will be an improvement, or the reverse, upon the war which we know, depends upon how we, of this generation, mould and shape the beginnings of air power. We are in face of a new force of almost limitless potentialities. Properly trained and directed, it is capable of transforming the whole face of war almost beyond recognition. It can turn the old, crude, hideous, blood-letting business into an almost bloodless surgery of forcible international adjustment, to the immeasurable advantage of mankind. Hereafter the writer gives his reasons for holding the belief that such a beneficent change is possible. That for good or ill a mighty change is in progress cannot be gainsaid. The revolution has begun. The day of the contentions of great armies, those huge mastodons of modern war, those saurians of human combat, is passing away before our eyes. It is possible that the last of the great historical battles has already been fought; mass slaughter, as a mere international "incident," lies buried, one hopes, in the war cemeteries of France and Flanders.

War only a means to an end.—War, after all, is only a means to an end. It is a way of settling an international difference which diplomacy has failed to adjust and which is not susceptible of treatment by the other methods of pacific settlement, such as inquiry commissions, arbitration, or submission to the Permanent Court of The Hague. When all else fails, there is no way in which a nation can assert its rights save by going to war. War is the means by which it vindicates a vital right threatened or infringed by the claim or the act

of another State. Its object is to cause the other State to desist from the action or abandon the claim which is the cause of offence. In other words, a war is fought in order to bring about a change of mind in another State. It may be that in the course of a war the reasons for which it was begun are modified or changed. New claims may be put forward, new rights asserted. But in regard to these, too, the purpose for which either party fights is to impose its will upon the other party, that is, to force the other party to recognise the validity of the claims which it has hitherto declined to admit.

It is a question, first and last, of persuading minds—the minds of the Government and (because Governments in all modern States are the servants of the people) of the people of the enemy country. We have come to associate the idea of war with the clash of armies, the shock of contending battle-fleets, and all the incidentals of a kind of struggle which still retains many of the features of the old tournaments of champions. Before one country could be brought to admit the justice of the other's claims it has been necessary for the professional or semi-professional fighters of the one to overcome the corresponding men-at-arms of the other. It has never been possible to dispense with the preliminary trials of strength between the opposing armies or fleets before the ultimate task, the exertion of the necessary forcible pressure upon the enemy Government and people, could be approached.

It is necessary to bear always in mind, that these preliminary stages, the slaughter of armies, the destruction (where destruction is possible) of fleets, are *not* the end of war but only a means to an end. The real end is a purely mental one. From the first disagreement in council to the last ball-cartridge that is fired in action, it is entirely a question of persuading minds and nothing else. It is the survivors, not the dead, who make peace. Victory or defeat is a state of mind.

The "direct action" of air power.—Now, for the first time in history it has become possible to dispense with the preliminary stages. Air power can strike straight at the heart of the enemy State. It can ignore armies and fleets. Like the plot of an Ibsen drama it can plunge *in medias res* and begin where the old warfare all but left off. It will not waste time on the slaughter of those who are only the armed instruments of the sovereign people of the enemy nation. True, there will be air combats; the enemy's flying forces will have to be fought, and the bases of those forces will be a prime objective. But air forces will not, most assuredly, seek only such objectives;

and, however intense the fighting in the air, the slaughter will be as nothing compared with that of the older war. Air power will not be prevented by opposing air power from penetrating an enemy's defence.¹ A cordon of impenetrable aircraft is an utter impossibility. It will set itself to the task—a political rather than a strictly military one—of bringing pressure to bear upon the principals whose agents have hitherto had to be destroyed as an essential preliminary to the further processes now immediately practicable. It will cut out certain stages in the older method of approach to the real end of war—the imposing of one nation's will upon another.² In its power of "direct action" it will see a means, and an effective one, of attaining that end without resorting to the slow, costly, ineffective, murderous procedure of conducting a campaign or bringing a hostile fleet to action.

Having this power to overleap the enemy's defences, will aircraft consent to behave as if they had not? Will they be so obliging as to observe a convention that the correct and traditional objects of attack are the protecting *corps d'armée*, the sure shield of the fleet, of the opposing State, and that only when these are destroyed may the fruits of victory be gathered? Will they not rather eliminate the processes of the historical mode of warfare and set themselves from the outset to the work of exerting that pressure to which battles are merely the preliminary?

The rôle of the air arm.—It is not suggested that no need or occasion will arise for aircraft to operate against armies or fleets. Assuredly, at any rate for some time to come, they will have to do so. But steadily and surely, of the three categories of objectives of air power—the armies or fleets of the enemy, the military objectives outside the operational zones of those armies and fleets, and the general mass of property in the enemy State—the last will tend more and more to replace the two former categories as the focus of attention from the air. Armies which dig themselves into lines of trenches, supported by successive lines so deep and strong as to make a real break-through an affair of appalling magnitude, fleets

¹ See pp. 25-7, later.

² In the *Reformation of War*, which the present writer had not had the advantage of seeing when this chapter was written, Col. J. F. C. Fuller writes (p. 148): "I have already pointed out that the policy of a nation is founded on the will of its civil inhabitants, and that the supreme military power of aircraft is their ability 'to hop' over armies and fleets and attack what is in rear of them." But Col. Fuller contemplates that the will to resist of the civil population will be broken by a method which the present writer considers entirely illegitimate—the use of a stupefying gas sprayed by the aircraft.

which shelter themselves behind harbour defences and mine-fields and venture whole-heartedly upon a major engagement only by a sort of mischance, will be left to wage their own war of attrition. They will have, no doubt, the assistance of the necessary ancillary aircraft, but one must contemplate in future wars the existence of "marginal" air forces which can be employed strategically. It is hard to believe that these will waste their time around the fields of operations or the well-guarded coastal points, or that, in going further afield, they will confine their attention to the "military objectives" which are, in general, the supply sources of the armies and fleets which themselves are no longer a primary object of air attack. Rather, on all the evidence, they will set themselves to break the moral of the people upon whose willingness to continue the war all depends in the last resort. Their task will be, in fact, to create a "complex of defeatism" in the national mind of the enemy. That great armies and fleets are still in being and undefeated will be no consolation to a people who see only deadlock or stalemate on the fronts and at home their own life and business made impossible by recurrent air attacks in strength. "It is clear," says Marshal Foch,¹ "that aircraft attack on a large scale, owing to its crushing moral effect upon a nation, may impress public opinion to the point of disarming the Government and thus become decisive."

The moral effect of air attacks.—It is because of the tremendous moral effect of air attacks that they are at once likely to be carried out against objectives in the heart of an enemy country and to be effective in their purpose of breaking down the enemy's will to resist. Conservation of energy prompts the employment of any instrument or method in the manner or at the point which will give the maximum results. Already, in 1918, it was recognised that the moral effect of bombing was very much more important than the material effect.² Many experts have testified to the predominance of the psychological over the physical effect (great as the latter is) of air bombardment.³ Their views were based on the experience of the Great War. Then, air power was only in

¹ Quoted by Sir F. H. Sykes in paper on "Air Defence" in *Edinburgh Review*, October, 1922; and also by Brig.-Gen. P. R. C. Groves in an article in *The Times*, 3 May, 1923.

² Dispatch of G.O.C. Independent Force, R.A.F., published in *London Gazette*, 1 January, 1919.

³ See, for instance, C. Lafon, *La France ailée en Guerre*, pp. 85, 187; Capt. Personne in Mortane, *Histoire illustrée de la Guerre aérienne*, i. 257; Lt.-Col. N. J. Gill, *The Aerial Arm*, 1919, pp. 135-7.

its infancy. In some respects it was perhaps unfortunate that the war ended when it did. As regards this question of the moral effect of air attacks, indeed, the lesson which it taught was, within its limits, sound. But what the world failed to realise in 1918, and still fails to realise to-day, is the magnitude of the results which air power by itself is capable of achieving.

Air power almost non-existent in 1914.—All the belligerents began the war with an insufficiency of aircraft for their ordinary tactical needs and, with the exception of Great Britain, never succeeded in reaching a point at which it was possible to dispose of an air force surplus to the requirements of the armies and fleets for their immediate needs. It may be a coincidence, but more probably was not, that Great Britain was also the only Power which created an Air Ministry. At the end of the war the Royal Air Force had over 22,000 machines on charge,¹ and this country was producing ninety aeroplanes a day.² How many machines we had when the war began is a doubtful question. A year or so before, when, according to Colonel Seely, Secretary for War, we had 120 aeroplanes "in first class order," Mr. (now Sir William) Joynson-Hicks showed that we had in reality only 53 ready to fly.³ Probably the true position was equally obscure in August, 1914. Mr. Winston Churchill, who speaks of "our exiguous and inadequate aviation," states that the Royal Naval Air Service had then 50 efficient machines, or about one-third of the number in the possession of the army.⁴ This would make the total aircraft strength of the country 200 machines. Sir Frederick Sykes gives the Flying Corps strength on the eve of war as "150 machines fit for war use."⁵ Both these estimates are probably too high. Air Commodore Brooke-Popham, who was in the best position to know the facts, has stated that of the 272 aeroplanes held by the R.F.C. and R.N.A.S. in August, 1914, scarcely 90 were fit for service.⁶ In other words, although the extraordinary military value of aircraft had been established by the Picardy manœuvres of 1910 and was well recognised, this country possessed on the eve of Armageddon fewer

¹ Sir F. H. Sykes, *Aviation in Peace and War*, 1922, p. 83.

² Lecture by Air Commodore Brooke-Popham at the United Service Institution, 3 December, 1919.

³ Joynson-Hicks, *The Command of the Air*, 1916, pp. 188-9.

⁴ Winston Churchill, *The World Crisis, 1911-14*, 1923, p. 312.

⁵ Sir F. H. Sykes, *Aviation in Peace and War*, 1922, p. 43.

⁶ Lecture at United Service Institution, 3 December, 1919. According to figures published in Germany after the war, and quoted in *Flight*, 8 January, 1920, Germany had 246 service machines at the beginning of the war and 4050 at the end. These figures must refer to aircraft in the hands of service units.

effective aeroplanes than archdeacons! It is an edifying thought but one which will puzzle the historian of the year 2500.

The lack of "marginal" air strength.—The consequences of the initial unpreparedness were felt all through the war. It was not peculiar to Great Britain.¹ France was in some respects more unfavourably situated still, for she found herself forced to scrap a large proportion of her existing machines—the monoplanes—soon after the war began. Her lack of effective machines was the main cause of her failure to carry the air war into Germany in 1916-17.² It was left, says M. Mortane, to the English to accomplish the attacks upon the German cities which the French aircraft should have sufficed to carry out.³

Sir Frederick Sykes has pointed out that, as the result of the demands of the Army and Navy for aircraft for directly military purposes, it was only in 1918 that "we managed to secure a margin and formed the Independent Air Force in June of that year."⁴ Long-range bombing, he states, had already been decided upon in principle so early as 1915,⁵ and spasmodic efforts to translate that principle into practice had been made. Always the needs of the Army diverted the machines from the wider strategical purpose, and even when the Independent Air Force was in being, it was still used to a great extent for attacking aerodromes close to the front. Nevertheless, he adds, the raids into Germany had an important effect upon the moral of the German people, and by the end of the war "the Air Ministry had in hand measures for bombing which would have gone far to shatter German munitionment."

¹ "Neither the Allies nor the Teutons have had a sufficient number of large aeroplanes to permit them to conduct major aerial operations against the other side" (H. Woodhouse, *Textbook of Military Aeronautics*, 1918, p. 10). As regards the inadequacy of the German air forces in 1914, see Von Hoeppner, *Deutschlands Krieg in der Luft*, 1921, p. 6.

² Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 182, 352-3.

³ *Ibid.*, i. 284. The French production of aircraft and engines was "always inferior in quality and quantity to the imperious necessities of the situation" (Mortane, ii. 133).

⁴ Sir F. H. Sykes, *Aviation in Peace and War*, 1922, pp. 88-92.

⁵ The statement of Oppenheim, *International Law*, 1921, ii. § 214*b* (see also Garner, *International Law and the World War*, 1920, i. § 311), that the policy of bombing Germany was reluctantly adopted as a reply to the attacks by the German aircraft on our towns, does not appear to be borne out by the facts. Mr. Bonar Law stated in the House of Commons on 16 October, 1917: "There is no change of policy. It is our intention to employ our aeroplanes in Germany and over German towns so far as the military needs render them free." An official statement, published in *The Times* of 1 October, 1917, had stated already that the fact that no bombing raids upon German towns were being carried out was due "not to any reluctance to raid the enemy's towns, but to the military exigencies of the times."

Great developments interrupted by the Armistice.—Sir Frederick Sykes's forecast of the probable effect of the increased air activities of the Allies in the winter of 1918-19 and thereafter finds support from other writers qualified to speak. "The hundreds of bombing machines which the English aeroplane factories were turning out at the time hostilities ceased, and the thousands of men being trained for bombing, make one wonder what would have happened to the German industries if the war had continued through the spring of 1919."¹ The huge British aerial bombs of 1650 lbs. weight came into use only in the last month of the war.² The biggest bombing machines did not come into action at all. It is well known that from 8th to 11th November, 1918, two super-Handley-Pages, with four Rolls-Royce engines, each of 375 h.p., were standing ready to start to attack Berlin. The Vickers-Vimy night bomber and the D.H.10A day bomber were in production at the date of the armistice but had not seen service. The Établissements Farman had their great "Goliath" bomber ready when the armistice intervened, and the Voisin four-engined machine was in construction.³ A great four-engined "Bristol" was also being constructed.⁴ The effect of the addition of these giant bombers to the already formidable air strength of the Allies must have been enormous. Had they come into action, we should to-day be able to form a clearer idea of the meaning of air power.

The nature and importance of moral effect.—It may be objected that, great as the moral effect of bombardment of the enemy's homeland may be, it will never be sufficient to break the spirit of a virile people and incline a nation to peace. England, it will be said, was bombed in 1915-18, and the only effect was to harden the hearts of the citizens and steel their determination to conquer Germany. To this it may be replied, first, that it is not altogether true that the bombing of England had no moral effect, for by moral effect is not meant only a sudden, craven desire to surrender; and secondly, that air attacks on the large centres of populations were merely

¹ Lieut. R. H. Reece, R.A.F., *Night Bombing with the Bedouins*, 1919, p. 10.

² Dispatch of G.O.C. Independent Force, R.A.F., issued in *London Gazette*, 1 January, 1919.

³ Maurice Percheron, *Les Aéroplanes de 1916 à 1920*, 1920, pp. 16, 45. See also article by Colonel Dorand in *L'Aéronautique pendant la Guerre mondiale*, Brunhoff, 1919, p. 117.

⁴ Percheron, *op. cit.*, p. 103. The Germans on their side only put their large four-engined Lizenz type of night-bomber into service towards the end of the war (M. Eynac in *La Guerre aérienne*, 17 October, 1918, p. 778).

"side-shows" in 1915-18, whereas in the next war they will be a primary operation.

Moral effect of the German raids upon France and England.—The moral effect which air bombardment will produce may take various forms. It may manifest itself in an early stage as profound dissatisfaction with the Government of the country, or with the military authorities, or with both. In both France and England in the late war the German air raids had results of this kind. "Every aggression by German aircraft," says M. Mortane, "led to the severe questioning of our authorities. Some of them succumbed to the often illogical attacks of which they were the victims."¹ The French pilots who were stationed at Buc, Villacoublay, and Saint-Cyr, for the defence of Paris, were bitterly reproached for failing to ward off the raiders.² Indeed, the powerlessness of the French aircraft to defend Paris brought a lasting unpopularity upon the French aviation.³ The pilots were openly accused of spending their time in the Paris restaurants when they should have been in the air defending the city.⁴ In England the dissatisfaction caused by the raids upon London and other towns usually vented itself in complaints of the Government's inaction. When the German Gothas raided London on 7 July, 1917, the most popular British newspaper⁵ declared: "Since the Dutch burned Chatham 250 years ago . . . there has not been a more discreditable event in our military history than Saturday's raid. There is not a single redeeming fact. The story is altogether humiliating." The kind of criticism of the air service which was rife in France found an echo in the complaints in a section of the British press⁶ in July, 1917, that some defence squadrons had been withdrawn from London to carry out exhibition flying before the King in France, and that aircraft which should also have been defending the city were employed as an air escort for Princess Mary when she went to visit (of all places) Southend. No doubt, on the whole, London took the air raids with dignity and composure, but no one who is acquainted with the facts can admit that the people who left London to crowd into Maidenhead, Manchester, Brighton and other safer towns, were exclusively "Jews and aliens."⁷ When Lord Curzon replied to the attacks upon the

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 134.

² *Ibid.*, ii. 323.

³ *Ibid.*, ii. 236-7.

⁴ Sir Philip Gibbs, *The Soul of the War*, 1915, p. 263.

⁵ *Daily Mail*, 9 July, 1917.

⁶ See, e.g., the *Star*, 23 July, 1917.

⁷ The aeroplane raids of September, 1917, upon London, says Professor A. F. Pollard (*Short History of the Great War*, 1920, p. 308), "were sufficiently distracting,

Government with a sneer (it was alleged) at the people of London "cowering in cellars,"¹ there was some indication that Government and people were a little "rattled." A diarist who recorded the conversation at the time was probably entirely accurate in his statement of a Minister's view in November, 1917, that "our people might not go on if freely bombed."² The idea that the German raids had none but a stiffening effect—they certainly had that, too—upon the moral of the people, is one which is not altogether correct. As the German expert, naval Captain Hollender points out, the contention that the raids upon England were a fiasco is disproved by the fact that 500,000 men (according to his figures) and an enormous number of guns, aircraft, and other material were immobilised by the necessity of defending the eastern and southern towns of England. The demoralisation caused by the raids was shown, he states, in the evacuation of the east coast towns by all the wealthy inhabitants.³ "As to the purely moral effect [of bombing by German aircraft] which filled the Tubes and raised the rents in Maidenhead and Brighton," writes a distinguished officer of the Royal Air Force, "our attitude recalls the remark of Mr. Jorrocks, who, when he was asked after a fall if he was hurt, replied, 'Not at all, not at all—rather the contrary.'"⁴

Moral effect of the Allies' raids.—Far profounder was the effect of the Allies' raids upon the Rhineland towns. As early as October, 1917, Herr Weissmann stated at the German Socialist Congress at Wurzburg that the people of Freiburg lived in terror of air raids and that the rich people had all left the city.⁵ The German press of the last year of the war affords increasing evidence of the effect of the Allies' raids upon the moral of Southern and Western Germany.⁶ The demand for some international agreement banning the

though it pleased the patriotic press to pretend that only immigrant aliens, East End Jews, or at least the poorest of native Britons, sought safety in flight from the risks they involved."

¹ See *Daily Mail*, 8 November, 1917.

² Col. Repington, *The First World War*, ii. 137.

³ Hollender, in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, pp. 392-3.

⁴ Squadron-Leader B. E. Sutton, D.S.O., O.B.E., M.C., on "The Work of the R.A.F. with the B.E.F. in 1918," in *Journal of the Royal United Service Institution*, February-November, 1922, p. 346.

⁵ *The Times*, 26 October, 1917.

⁶ See, for instance, the reports in *The Times*, 26 December, 1917, and in *The Aeroplane* for 20 February, 1918, and 12 June, 1918. Extracts from letters from Mannheim, Stuttgart, Trier, etc., showing the effect of the Allies' bombing, are quoted by Air Commodore H. R. Brooke-Popham in a paper on "The Air Force," in *Journal of the Royal United Service Institution*, February-March, 1920, pp. 56-57.

aerial bombardment of cities outside the war zone made itself heard with steadily growing force. In April, 1918, the Second Chamber of the Bavarian Diet unanimously passed a resolution requesting that the Federal Council and the Imperial Government should be moved to open negotiations for the conclusion of a general agreement to secure immunity for such cities.¹ In the same month, General Von Stein, the Minister of War, was questioned upon this subject in the Reichstag and replied that the restriction of aerial attack to fortified towns had not been proposed by any enemy Government and that Germany could not undertake such an obligation alone.² On 3 July, 1918, Herr Scheidmann proposed in the Reichstag that the German Government should take the initiative in coming to an agreement with the Allied Powers to abstain from bombing towns outside the war zone, but again the Government declined to make the first move in the matter.³ Meanwhile, the demand for protection for the cities grew in volume and intensity. The same causes which had brought about the recall of two squadrons of the R.F.C. from France in the summer of 1917, for the defence of London and South-Eastern England, led in still greater degree to the diversion of German squadrons from the front to the interior of the country. The effect was quickly felt in the air fighting in the battle zone. Captain E. V. Rickenbacker, who commanded the American No. 94 Pursuit Squadron, has testified how the work of the Allies' and American pilots on the western front was assisted by the raids of the British Independent Air Force into Germany, and how fully the events confirmed the prophecy of the great commander of that Force, General Trenchard, that his operations would draw important air and anti-aircraft elements out of the German battle-zone strength to defend the cities behind.⁴ Every raid spread terror and panic through widespread areas far outside the actual objective of attack. That this was so may be seen from the experience of one of the cities affected—Trèves. The *Trierische Landeszeitung* stated early in October, 1918, that up to that time Trèves had experienced 107

¹ *Frankfurt Gazette*, 13 April, 1918, quoted *Daily Mail*, 15 April, 1918.

² *Daily Mail*, 25 April, 1918. See also Gen. von Hoeppner, *Deutschlands Krieg in der Luft*, 1921, p. 153.

³ J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. 428.

⁴ Rickenbacker, *Fighting the Flying Circus*, p. 314. Von Hindenburg justified the attacks on London on similar grounds. "The military advantages are great. They [the raids] keep a large amount of war material away from the French front and destroy important enemy establishments of various kinds" (Letter of 7 July, 1917, to the Imperial Chancellor, quoted in Ludendorff, *The General Staff and Its Problems*, Eng. trans., ii. 457).

air raid alarms, yet the actual number of raids had been only seven.¹ There is, indeed, the most ample evidence of the depressing effect of the recurrent raids of the British squadrons upon public opinion in all the districts of South-Western Germany within the radius of attack. As M. Mortane states: "The work of the Independent Air Force grew in strength and complexity until it became one of the most potent factors affecting, at first, the enemy's military organisation and then the moral of Germany."²

Air attack no longer a "side-show."—It must be remembered that there will not be present in a future war one feature of the last which made for the preservation of courage and equanimity in raided centres of population. Then, it could be felt that the attacks upon such centres were in the nature of a "side-show." They were a diversion and a wasting of military strength that could have been more profitably employed elsewhere. For every bomb that fell in a town outside the zone of operations there was a bomb the less to drop within that zone. This consideration undoubtedly helped the people of London, at any rate, to bear their tribulations with that "composure" which Mr. Winston Churchill had counselled in the early days of the war.³

Very different will be the conditions in this respect in future wars. The bombing of civilian objectives will be a primary operation of war, carried out in an organised manner and with forces which will make the raids of 1914-18 appear by comparison spasmodic and feeble. It will then no longer be possible to speak of "eccentricities such as attacks on London" or to complain that the commanders in the field or afloat were troubled with demands for home defence against air raids when "what we were busy about was winning the war, not saving towns from being bombed—which was merely an unfortunate accompaniment to war."⁴ The attacks on the towns will be the war. Their success will mean victory for the side which can deliver them in sufficient strength. It will be the operations of the armies and the fleets that will to some extent be the "side-shows." Wars will be lost or won above and behind the trenches and the tide-water frontiers. No amount of

¹ Quoted in the *Evening Standard*, 12 October, 1918.

² J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. 473.

³ In a minute of 5 September, 1914, Mr. Churchill wrote: "Instructions must be prepared for the guidance of the Police, Fire Brigade, and the civil population under aerial bombardment. *This will have to be sustained with composure*" (*The World Crisis*, 1911-14, p. 316).

⁴ Sir Reginald Bacon, *The Dover Patrol*, pp. 534, 568.

composure, no surplusage of bull-dog tenacity can save a people raided copiously, scientifically, systematically. "No people on earth, it may readily be admitted, can maintain the efficiency of its war activities under the regular intensive bombing of its centres of population."¹

The future of the air arm.—Writing just before the great war, a professional soldier, Sir George Aston, foresaw conditions in which the air arm alone would be able to bring about the decision in a war. That time, he saw, was not yet. The small number of aircraft then available would not be capable of exerting sufficient pressure upon the enemy civil population to induce them to force their Government to sue for peace. But "when flying has been developed to such an extent that flying combatants can be counted in tens of thousands, instead of by hundreds, then the issue between nations may be brought to a conclusion in the air."² A crowded population, he thought, if their means of livelihood were so interfered with that they were brought near starvation, could be bombed into submission.³ Since Gen. Aston wrote, the development of air power has been along the lines of an ever more enormous increase in armament rather than in numbers. It is probable that, now or in the not very distant future, the effective strength for purposes of destruction of a few hundred giant bombers will far surpass that of the "tens of thousands" of machines which he contemplated. Indeed, in the view of the greatest of the French air fighters, a few hundreds of machines would be capable of inflicting upon a great city damage which can hardly be other than decisive in its effect upon the moral and fortitude of the nation attacked.

The view of René Fonck.—"To obtain an idea of the power of bombing aircraft," says Capt. René Fonck, "let us take a concrete example, that of a bombing fleet composed of 500 machines carrying a useful load of 2000 kilogrammes each. . . . Taking account of the secondary effects, which could be felt over a radius of fifty metres, one can see that such a fleet could level a square kilometre of a town in a single night. In two or three weeks of war, a city as large as Paris could be practically destroyed. Now, the fleet in question, constructed by the most developed industrial methods, would cost less than three warships. If, in lieu of explosive bombs, gas bombs were used, the disaster would be immense."⁴

¹ Sir Walter Raleigh, *The War in the Air*, p. 489.

² Sir G. Aston, *Sea, Land, and Air Strategy*, 1914, p. 238.

³ *Ibid.*, p. 262.

⁴ Fonck, *L'Aviation et la Sécurité française*, 1924, p. 118.

It would be folly to claim that now, or in the immediate future, the rôle of fleets will be reduced to the escorting of aircraft-carriers, or that of armies to protecting a line behind which air bases can be formed. But it would be equally folly, in the face of such statements as those of Capt. Fonck, to deny that the air arm is a force of enormous potentialities or that it must tend more and more to take premier place as the decider of armed conflicts. Those who dream that the relative position of the three arms is stereotyped as it was in 1918, or that people will be able to bear future air bombardments with the philosophic fortitude with which they bore those of the late war, are likely to have a rude awakening.

The menace of air power.—The awakening will be the ruder if the view widely held, that aircraft will be used in future wars to attack ruthlessly and relentlessly the great urban populations of the enemy country is found to be realised. One must reckon seriously with that view—the latest manifestation of the principle that “moderation in war is imbecility.” It is the extreme expression of a line of thought which, at its origin, is sound and reasonable. A great body of moderate opinion can be cited in support of the view that air power will not be satisfied with the limitations which the humanitarians and idealists would impose upon it. Carried to extremes, the claim that the air arm should be allowed to exercise its capacity for “direct action” to the full is in danger of becoming a claim to the right to spread death and desolation broadcast. Indeed, one school of thought avows without qualification its adherence to a doctrine which can only be described as medieval in its hideous simplicity. One finds a responsible editor, who may be taken as the spokesman of this school, writing as follows:—

“The only effect an International Bombing Code can have is to cramp the style of the R.A.F. at the beginning of the war, just as the Hague Convention and the Geneva Convention [the Declaration of London is no doubt intended] cramped the style of the fighting men of the Navy early in the war, 1914-18. If we go bang into the next war all hair and teeth and blood, as the saying goes, free from any fetters of rules and regulations, we may achieve quite useful results at the start.”¹

In a later issue the same editor elaborates his thesis by arguing that, in time of war, all the inhabitants, male and female, of the belligerent countries are, or should be, engaged

¹ Mr. C. G. Grey in *The Aeroplane*, 11 July, 1923.

in work which assists in some way the troops in the field, and are, therefore, proper targets for air bombs! ¹

Sir Frederick Sykes's view.—More moderate in expression, yet hardly different in substance, are the views of the representatives of the Services.

"Air War," says Sir Frederick Sykes, "in spite of any and every international agreement to the contrary, will be carried into the enemy's country, his industries will be destroyed, his nerve centres shattered, his food supply disorganised, and the will power of the nation as a whole shaken. . . . Various proposals, such as the control of the air effort, service and civil, of all countries by the League of Nations, and even the complete elimination of aviation, have been put forward as a means of avoiding the horrors of aerial warfare and its appurtenances, but they are untenable, and any power wishing and able to sweep them aside will undoubtedly do so. A future war, as I see it, will begin something after this manner, provided either side possesses large air forces. Huge day and night bombers will assemble at the declaration of war to penetrate into the enemy's country for the attack of his centres of population, his mobilisation zones, his arsenals, harbours, strategic railways, shipping, and rolling stock." ²

Elsewhere Sir Frederick Sykes prophesies that in the wars of the future great air forces will at once strike—with asphyxiating chemical bombs—at "the cities, homes, and factories of the enemy, if within range, thus creating panic and inaction and breaking his will and reserve power at its source." "In future," he states, "it is the whole population that will bear the main shock of attack." ³

Sir William Robertson's view.—"Modern war being largely a matter of war against economic life," says Field-Marshal Sir William Robertson, "it has turned more and more towards the enemy's home country, and the old principle of making war only against armies and navies has been consigned

¹ *The Aeroplane*, 1 August, 1923. It may be urged that words used in a weekly publication are possibly not very carefully pondered, that on fuller consideration they would probably have been modified, and that it is not fair to quote them as representing the settled views of their writer. But Mr. Grey is too well known and influential a figure in the world of aviation to warrant one in dismissing anything that he writes, even *currente calamo*, as unimportant; and the views which he expresses are, in fact, held by many people, and must be reckoned with if one's survey of the problem is to be complete. The argument used is, of course, as old as the hills and was probably quoted with great effect when some reformer first suggested that prisoners of war should not be slaughtered.

² Sir F. H. Sykes, *Aviation in Peace and War*, 1922, pp. 100-1.

³ Article on "Air Defence" in *Edinburgh Review*, October, 1922, pp. 213, 214.

to the background. Raids on non-military places and people may be regarded as barbaric, and they may, by exasperating the inhabitants, have the opposite effect to that intended—the breaking down of the country's moral—but they are bound to play a prominent part in the next contest, and on a far more extensive scale than in the great war. A new weapon, such as the aeroplane or submarine, will always open up new paths for itself, and in the case of the aeroplane the path can be followed up within a few minutes of the declaration of war—if not before.”¹

Some other views.—“Fleets of aeroplanes,” says Col. Fuller, in his forecast of the events of a future war, “will attack the enemy's great industrial and governing centres. All these attacks will be made against the civil population in order to compel it to accept the will of the attacker.”² Night raids by aircraft, says Lieut.-Col. Gill, though they may kill defenceless women and children, are, nevertheless, justifiable because of their general military effect (in destroying munition factories, etc.) and their influence upon the final issue of the war.³

The destroying of the moral of the enemy generally and “bringing the business of the country to a standstill” will be one of the aims of air action in future wars, says Wing-Commander C. H. K. Edmonds, D.S.O., O.B.E.⁴ The younger school of thought in the Air Force sees also in air power a means of attacking the moral of an enemy population and thus inducing the people to bring pressure upon their Government to sue for peace.⁵ There is ample evidence that purely military objectives are by no means solely contemplated as the legitimate targets of air attack.

¹ Sir W. Robertson, *From Private to Field-Marshal*, 1921, p. 351. The striking similarity of Sir W. Robertson's words to those of Gen. von Freytag-Loringhoven (see p. 19) will be noticed.

² Col. J. C. F. Fuller, *Tanks in the Great War*, 1920, pp. 314-15. The probability of air attacks upon great cities in future wars is also emphasised in Col. Fuller's later book, *The Reformation of War*, 1922.

³ Lieut.-Col. N. J. Gill, *The Aerial Arm*, 1919, p. 164.

⁴ Paper on “Air Strategy” read before the Royal United Service Institution on 12 December, 1923, quoted in *Flight*, 27 December, 1923.

⁵ See paper by Flight-Lieut. C. J. Mackay on “The Influence in the Future of Aircraft upon Problems of Imperial Defence” in the *Journal of the Royal United Service Institution*, February-November, 1922, pp. 280, 283, in which attention is drawn to the characteristics of air power in its “(a) ability to strike at an enemy's resources, industrial or otherwise; (b) ability to influence the morale of a nation by striking at the Government and the people themselves,” and in “carrying the war to the cities and industrial centres of the enemy country which the Army and Navy are unable to reach.” See also paper by Squadron-Leader A. A. Walser on “Aircraft and Imperial Defence” in the *Army Quarterly*, October, 1922.

A French forecast.—The French expert, Commandant Jauneaud, contemplates in future wars the employment, as an independent arm, of an *aviation d'action lointaine*, which will operate against the large cities and industrial centres of the enemy as well as his aerodromes and lines of communication. It will deliver recurrent attacks upon the enemy's capital until either complete destruction or evacuation results. The action of the air arm, he thinks, will supplement but will not replace the operations of armies and fleets. "The aerial battles of 'the interior' will complete the land or naval engagements of 'the fringe,' but both the one and the other will seek the same end, which is the overthrowing of the will of the enemy nation by every means. Formerly, in the time of Louis XIV., for instance, it was enough to force a great State to give in if, one fine day, a small army was defeated. In future, it will be necessary that the entire nation should feel itself overwhelmed, with its armies and fleets."¹

The bombing of cities.—In the light of the views expressed in the extracts quoted above, it is hardly correct to say, as Lord Gorell does,² that no one writing or speaking with authority, "has ever asserted that a main function of an Air Force in war would be to bomb cities." In any case, he goes on to state that, after seeking to destroy the enemy's air force ("it never wholly can"), "it will bomb—and, if it can, bomb continuously—the enemy arsenals, dockyards, bridges, and rail junctions, partly because by so doing it will force the enemy air force to battle and partly because that will partially or completely destroy the enemy's power to carry on the war." Now, there is not a single important city in the world which does not contain "arsenals, dockyards, bridges, and rail junctions," or some of these objectives, and no one who knows anything of the air raids of 1918 can suppose for one moment that such targets can be bombed, at any rate from the heights at which day bombing is necessarily carried out, without, in effect, bombing "the city" as well. Consequently the distinction which is made between air attacks upon cities as such and air attacks upon certain widely-distributed and universally present objectives within these cities, does not, in practice, amount to very much.

¹ Marcel Jauneaud, *L'Aviation militaire et la Guerre aérienne*, 1923, pp. 218, 232, 233-4.

² In a letter to *The Times*, 22 January, 1924. It is hardly necessary to add that the policy of air attack upon civilian populations for the purpose of destroying their moral has had its champions in Germany also: see, for instance, Eltzbacher, *Totes und lebendes Völkerrecht*, p. 67, quoted by O. Nippold, *The Development of International Law after the World War* (trans. by A. S. Hershey), 1923, p. 144.

The need for definition and regulation.—If there is in the first of the extracts quoted in the preceding pages the candid expression of sentiments which would make a respectable Congolese shudder, and in some of the others something more than a hint that it is mere folly to try to prevent the horrors which are foreseen, one takes heart of grace, nevertheless, to ask whether something may not be done to direct air power along lines which will prove less calamitous for mankind. Air power, it must be repeated, can never be the monopoly of any single nation. The idea that we can give the enemy "strong cave-man stuff" and suffer nothing ourselves is wholly an illusion. Let there be no mistake about it: unless air power is regulated and controlled, it will destroy civilisation itself. "If one thinks," says M. Mortane (and no one knows more than he of the history of air warfare), "of the ravages of the bombing aircraft extended into the heart of the enemy countries, of the towns, factories, railway stations, and arsenals annihilated (for if the radius of action of bombing aircraft is increased, no obstacle to its action remains), one can envisage in all its immense and terrifying aspect and in its reality the kind of war which will be unrolled upon the future battlefields of the world, and I imagine that just to see the horror of it is to experience an increased longing to rid the world of it for ever."¹

Aircraft has a terrible lesson in store for mankind. Shall we ever learn that lesson properly until it is hurled at us in thunder and flame? Sometimes one doubts whether we shall. It is admitted that air raids will be far more terrible in future wars than they were in 1918—a hundred times more terrible, according to a late Secretary of State for Air²—but it is doubtful whether the appalling menace to civilisation which this admission involves is grasped by the general public. It is doubtful whether such rules for air bombardment as those drawn up by the jurists at The Hague in January-February, 1923, will save the world's great cities. The doctrine of the "military objective," useful within its own limits, will be no adequate protection. Any belligerent who chooses will be able to keep within the rules which embody that doctrine and yet to use his air arm for a purpose quite distinct from the destruction of objects of

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. 354.

² Statement by Sir S. Hoare in the House of Commons, 23 July, 1923; in the same debate Mr. Ramsay MacDonald, then a private member, said: "The next war will be worse than ever. There will be the blockade and, what is more, there will be the air raids, with poison gases, which will simply devastate whole towns and whole countrysides."

military importance, namely, for the creation of a moral, political, or psychological effect within the enemy country. The quotations already given show that Gen. Baron von Freytag-Loringhoven is very far from standing alone in holding that air power must "open up its own paths" and that "the principle hitherto accepted that war is made only against the armed power of the enemy is in this [air bombardment] as in other spheres relegated to the background."¹ There is no reason to suppose that the "independent air forces" of the future—and there will be such forces at the disposal of belligerents, over and above the aircraft operating closely with their armies and fleets—will not pursue, and more relentlessly and effectively, the aim which the Independent Air Force of June-November, 1918, pursued; and that aim was in large part the destruction of the moral of Germany.²

How International Law can help.—It is here that international law can usefully step in. It can define the limits within which air power can legitimately be used for exerting a psychological pressure upon an enemy people under the existing rules, and it can suggest a line along which those rules may be developed in such a way as to satisfy the reasonable requirements in this direction of the new arm. First, it would point out that there is at present no law nor custom authorising bombardment for a specifically moral or political purpose. It is true that in the bombardment of military objectives it is inevitable that some incidental loss, necessarily affecting moral, should fall upon non-combatants. But deliberately to reckon with that moral effect, to take care that one's aircraft so attack military targets, or attack only military targets so situated, that the psychological pressure is also exerted, and, in fact, to misapply the doctrine of the military objective to a purpose never contemplated in the rules, would unquestionably be a breach of international law.

Its offer to air power.—If one stopped there, one would leave air power unsatisfied. It is necessary that international law should show itself ready to move with the times, to be

¹ Von Freytag-Loringhoven, *Deductions from the World War*, Eng. trans., 1918, pp. 57-8.

² Lord Weir, in a speech on 15 November, 1918, at the Agricultural Hall, Islington, said, with reference to the work of the Independent Air Force: "Nothing in the war has caused such a diversion of Germany's man-power and effort as the moral and destructive influence of the bombing of German industrial regions." The G.O.C. the Independent Air Force, in his despatch, published in the *London Gazette* of 1 January, 1919, stated: "At present the moral effect of bombing stands to the material effect in a proportion of 20 to 1, and therefore it was necessary to create the greatest moral effect possible."

practical, transigent, conciliatory in face of the new conditions, not precise, pedantic, obstructive. A *non-possimus* attitude would be fatal. What, then, can international law say?

It can say, in effect, to air power:—

"You propose to use your unique power for that kind of direct action for which it is so peculiarly fitted. Well and good; but what does that mean? Does it mean wholesale destruction, homicide on the grand scale? If so, I—the old *jus gentium*, a power as old, as strong in the last resort as war itself—say No. I cannot agree to countenance methods so fraught with disaster for mankind. But I am prepared to compromise if you will meet me half-way. Are you prepared to concede something to humanity, to stop short of acts which may indeed break a nation's moral but will break civilisation too? Are you ready, in a word, to obtain your results by other means? Your purpose is the destroying of your enemy's moral and will to resist. That purpose can be achieved by other means than mass-slaughter. It can be achieved by methods which international law can approve, as it never will approve the destruction of innocent lives for such an end. Let your object be to destroy the enemy's inanimate rather than his human resources, his wealth and business rather than his citizens' lives; to make work, if one may put it so, for the builder, the unemployment exchange, the bankruptcy court, rather than for the coroner and the undertaker. There I am ready to meet you. If you will agree to attack only that kind of non-combatant property which can be destroyed without loss of life (I do not speak now of military objectives or combatants), I am prepared to admit that such a method of warfare would be a reasonable development of the accepted principles of international law. In brief, I will give you *property* to destroy if you will give me *life* to save."

The compromise suggested.—Will air power accept such an offer? In Chapter X. the writer tries to show that a settlement on these lines would not only be, from the point of view of international law, the natural, evolutionary product of existing war rights as affected by the new conditions, but should be a practicable and acceptable proposition from the point of view of the air commander. He shows that the experience of the great war points to the probability that in future wars bombing will be largely a night operation and, further, that greater accuracy of aim should be possible in night than in day bombing. Consequently, air power could not complain that its freedom of action was unduly hampered if it were asked to accept a rule differentiating, in regard to precision of attack, between the military objectives which are liable to bombardment for a military purpose and the non-military objectives which can be attacked for a political or psychological end, and confining the bombardment of the latter kind of objectives to the hours of darkness. Such a

restriction would rule out all attacks upon private dwellings, whether by day or night, but would leave open to bombardment: (1) military objectives at all times; (2) other property at such times as it can be attacked without material danger to civilian life. Certain classes of property of the latter category, such as waterworks, railways, or canals in open country, gasometers, etc., could be bombarded by day without endangering life, but the great bulk of it—the large factories, warehouses, storehouses, Government, municipal and industrial offices, etc.—would, in effect, be placed “out of bounds” for bombing aircraft by day and would be liable to attack only during the hours of darkness when the buildings in question might reasonably be expected to be unoccupied. A compromise of this kind, designed to save non-combatant life so far as possible, yet leaving the air arm free to carry out a policy of property wrecking and bloodless devastation which is certain to have an enormous moral effect, should not be unacceptable to the champions of air power. They must remember that international law has gone to the extreme limit of concession in agreeing to it. They must remember, too, that it is based on the very simple principle that the civilian property which is recognised as liable to bombardment at night, when unoccupied, is just that property the destruction of which is likely to have the maximum effect in disorganising the Government, industry, and commerce of the country. On the other hand, the conservatives of international law must not be shocked by the recognition of the deliberate destruction of non-military property as an end in itself in the operations of war. It is far better that such property should be destroyed under restrictions which will reduce loss of life to the minimum than that great modern cities should be bombed ruthlessly from the air; and it is almost certainly the latter fate that will be theirs under a *régime* which makes military objectives alone liable to bombardment but is obligingly and tactfully vague as to what military objectives are.

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The practicability of the suggested solution.—In chapter x of this book the writer quotes high technical authority in support of the view that—contrary to the general belief—a considerably higher degree of precision is attainable in bombardments by night than in those by day. He also quotes instances showing that the precision attained is only a comparative one. To pick out a particular building and bomb it is probably not practicable. But on all the evidence it should be perfectly possible for a skilled bombing squadron,

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at night, to confine its bombardment if not to particular buildings, at least to circumscribed *areas*, and it is perfectly certain, if that is so, that one of the aims, perhaps the chief aim, of air power can be achieved without serious resulting loss of life. For it is quite certain that there are in actual fact areas which fulfil the two conditions of being (*a*) very busy and important centres of industry and commerce by day; and (*b*) almost deserted by night. The areas containing the docks, the wholesale warehouses, the great business offices of the large cities are such. If a main object of air power will be to disturb and destroy an enemy's resources of strength and sinews of war, then, the writer submits, a strong case can be made for allowing bombardment of such areas, wholly "civilian" in character though they be, but to allow it by night only.

The case of the City of London.—Take a concrete case, that of the City of London, in the narrower sense. The *day* population of that very important business area of 675 acres is over 400,000; the number of people *living* in it is under 14,000. Now, if arrangements could be made in war time—and they could readily be made—that these 14,000 people should sleep elsewhere among London's total population of over seven millions, or that they should seek shelter when aircraft are signalled as approaching, the City becomes, in the writer's submission, an area which an enemy would be justified in bombing in the dead hours. Obviously the bombing of it would have a very great effect upon the economic life of the nation.

Some reasons for the acceptance of the compromise.—There are certain reasons which incline one to believe that air power may be disposed to lend a favourable ear to the demand for moderation. First and foremost is the reluctance of the fighting men themselves to inflict unnecessary suffering upon non-combatants. The idea that women and children may be killed in bombing raids is one which is repugnant to airmen, and there is no reason for supposing that this chivalrous feeling is the monopoly of any one nation. "If wars can be won only by haphazard night bombardments of towns, where there are women and children," writes a very gallant American pilot, "then they had far better be lost."¹ The same officer relates how he asked a French pilot who had been in a bombing squadron and had transferred to a fighting one: "But how about your objectives? At night you can never be sure of

¹ J. N. Hall, *High Adventure*, 1918, p. 177.

hitting them, and, well, you know what happens in French towns." "It is why I asked for my transfer to *chasse*," said the French pilot.¹

Elsewhere,² the writer shows that the German commanders and airmen repudiated indignantly the charge that they sought to kill women and children. That repudiation was in all probability entirely sincere. Under the *régime* and with the technique of air bombing which then prevailed, it was inevitable that innocent victims should be claimed, and this was especially the case in the reprisal raids. Such raids were not popular. Capt. Weiss, former commandant of the squadrons attached to the Seventh French Army, speaking of the French reprisal raids upon German towns, said: "Our aviation was lacking in enthusiasm (*manquait d'entrain*) for such methods. Our bombs were reserved for military objectives."³ "The British airman—every British airman," a British war pilot is recorded as stating at the height of the agitation for reprisal bombing in June, 1917, "would ten thousand times rather fight ten Boche birds single-handed on the western front than bomb a quiet German town and kill women and children. . . . But," he added, "if any squadron is ordered to bomb a German town, it will, of course, be done."⁴

The chivalry of the air.—Perhaps the most hopeful, and certainly not the least important, factor in the difficult problem of the regulation of air bombardment is the exceedingly high standard of honour and professional conduct to be found in the air services themselves. Those services are unique among armed forces in that the actual fighting *personnel* is mainly composed of officers. In France, during the war, pilots of the rank of *adjudant*, *maréchal des logis*, and *sergent* were fairly common, but the officer pilots appear, nevertheless, to have been in the majority. The pilots of the German two-seaters were usually N.C.O.'s, but the observers were invariably officers and as such were in charge of the aircraft.⁵ Practically all the British pilots were officers. In a later chapter, the writer shows how the quality of the *personnel* has influenced the character of air fighting and has restored in some measure to warfare the chivalric and almost knightly attributes which seemed to have passed away with mail-armour and rested

¹ J. N. Hall, *op. cit.*, p. 210.

² See pp. 218-19.

³ Quoted in Mortane, *Histoire illustrée de la Guerre aérienne*, i. 126.

⁴ Quoted in *Flight*, 28 June, 1917.

⁵ Capt. A. E. Illingworth, *Fly Papers*, 1919, p. 69; Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 259.

lances. To any armed force, and especially to a *corps d'élite*, duty is duty, of course, and the orders of superior authority must be obeyed: but one is entitled to reckon with the probability that, both in the orders given and in the manner in which they are executed, the fact that the new chivalry of the air will be reluctant to carry out attacks which are manifestly inhumane will not be wholly without effect.

The policy of moderation.—A further influence for moderation will be the very fact that the purpose of the employment of the strategic air arm, of the air force of manœuvre, will be primarily a political one. Its object will be to promote in the enemy population a will to peace—on the attacker's terms. Its weapon will not be the bomb alone. Another and in some respects a deadlier one will be the leaflet. Here, again, the writer must refer to a later chapter, in which he describes the extraordinarily widespread resort to methods of this kind in the late war. It is probably still unknown to the public at large how common was the employment of aircraft for the dissemination of propaganda. In future wars still greater resort to the practice of dropping proclamations and other leaflets from the air may be expected. The great war was peculiar in so far as the anti-war party in each of the States involved was weaker and less vocal than it has usually been in the wars of the past and than (with the democratising of institutions and education) it is likely to be in the wars of the future. To enlist the sympathies of the lukewarm section of the enemy populations, to encourage those who are in any case favourable to peace, will be an aim of air power, and it will clearly be an unwise policy to drive these classes into the opposite camp by adopting methods of indiscriminating brutality. Rather the attacker will strive to show that those who are already inclined to see something good in his cause are supported in their views by the manner in which he wages war. To drive a whole people to desperation would be folly.

One must not, however, set this last influence for moderation too high. One must remember the war atmosphere, the long-ing which war brings—as old as history :—

For the wrecking of one land only,
Of Ilion, Ilion only,
Most hated of lands.

The fear of counter measures.—It must, however, be added that the war spirit of the conflicts of the past will be checked and moderated by one important consideration of a

very practical kind in future wars. In the former there was not, as there will be in the latter, the restraining influence of a possible retaliation by the enemy; or at least any retaliation would then have been directed, not against the champions of ruthlessness, but against the unfortunate British subjects who happened to be still at large in the enemy country. In the case of air attack, on the other hand, it will be felt that, unless the enemy is powerless in the air, the agitators and their friends and property may suffer from the reprisals which are likely to follow the abandonment of all restrictive rules.¹

Absolute defence from air attack impossible.—Perhaps, indeed, this is the strongest motive of all for moderation, the knowledge that “both sides can play the same game.” No nation, however powerful its air forces and anti-aircraft defences, can hope to safeguard absolutely its homeland from the raids of any enemy whose air strength is not negligible. There can never be in the air that sure line of defence for an island nation which a powerful fleet constitutes at sea. To suppose that no idea of reciprocity need be entertained is a delusion. Throughout the great war, as M. Mortane points out, air attack had the upper hand of air defence. “Aviation reigned as mistress of the sky which it had conquered and the D.C.A. (*défense contre avions*) was unable to bar its path.”² “Against nocturnal bombardment,” he says elsewhere, “there is no certain and efficacious defence, nor, for that matter, against day bombardment.”³ The problem of anti-aircraft defence was one which confronted the belligerents from the first days of the war, and the armistice came without its being solved by any of the nations involved.⁴ Towns which were supposed to be safely guarded were raided again and again. In March, 1917, the *Frankfurter Nachrichten* announced that the centres of German war industry were now “as good as absolutely protected against enemy air attacks by day,” and that the searchlights and sighting apparatus which had been provided were a guarantee of adequate protection by night.⁵ Those centres of industry had a rude awakening. By the end

¹ Gen. Ludendorff (*My War Memories*, 1914-18, Eng. trans., ii. p. 700) states that permission was refused in the autumn of 1918 for the use against London and Paris of “a particularly effective incendiary bomb (expressly designed for attacks on the two capitals), sufficient supplies of which were ready in August.” Count Hertling “requested G.H.Q. not to use these new incendiary bombs on account of the reprisals on our own towns that would follow.” Ludendorff himself was of opinion that in any case they would never force the enemy to make peace.

² J. Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 241.

³ *Ibid.*, in *La Guerre aérienne*, 7 February, 1918, p. 203.

⁴ *Ibid.*, *Histoire illustrée*, ii. 213.

⁵ Quoted in *The Times*, 23 March, 1917.

of 1917 the large cities and important industrial centres of South Germany which were exposed to air raids were all protected by balloon barrages as well as by guns and searchlights.¹ Yet Mannheim and a host of other towns were repeatedly raided by the British, French, and American squadrons.

The idea that the possession of a strong air force, as of a strong fleet, is a guarantee of security was dealt with and refuted in a memorandum which was drawn up by the British Air Staff in France in September, 1916.² This memorandum points out that the aeroplane is an offensive and not a defensive weapon, and that it is utterly impossible to prevent hostile machines from crossing the line, "simply because the sky is too large to defend." This, it states, is the inevitable consequence of having to fight in three dimensions.

"No air force," says a distinguished officer of the Royal Air Force, "can be expected entirely to prevent the enemy from crossing the lines. . . . Air superiority of its very nature is relative ; it can hardly be absolute."³ "The impossibility," says another, "of preventing single machines or even all hostile patrols from crossing the lines cannot be realised without comprehending the immensity of the air and the difficulty from the air of seeing other machines in it."⁴

The events of the war itself demonstrated the truth of these statements. They showed that the capacity of the British and French squadrons to pierce the German defence cannot have depended upon the possession by the Allies of a superiority of air strength. Paris was most powerfully defended on the ground and by the squadrons attached to the Entrenched Camp, and lay, moreover, behind a frontier line of operating Allied aircraft. Yet all her defences were powerless to protect her from German raids up to almost the end of the war. Even in September, 1918, the city, for all its protectors, still stood open to attack ; on the 15th of that month a German air force

¹ Lieut. R. H. Reece, *Night Bombing with the Bedouins*, 1919, p. 45.

² This memorandum is quoted in full by Maurice Baring, *R.F.C.H.Q.*, 1920, pp. 180-4. The same view was held in Germany. A reply by the Government representative in the Reichstag to questions from deputies on the subject of air defence is stated to have been to the effect that "there are no absolutely certain means of warding off aerial attack. The best means is a good anti-aircraft aerial defence ; then the threat of reprisal flights against enemy capitals" (*Flight*, 9 May, 1918).

³ Wing-Commander J. A. Chamier on "Aircraft Co-operation with Infantry" in *Army Quarterly*, October, 1920, p. 128.

⁴ Squadron-Leader B. E. Sutton on "The Work of the R.A.F. with the B.E.F. in 1918" in *Journal of the Royal United Service Institution*, February-November, 1922, p. 343. See in the same sense the paper by Flight-Lieut. C. J. Mackay in same *Journal*, p. 290, where the immense difficulty of preventing enemy machines from reaching their objective is emphasised.

of forty machines was able to inflict damage upon it, and in spite of a barrage fire which gave the city the appearance of a "volcano in eruption," lost only two machines.¹

The limitations of air defence.—The truth is that absolute protection against air attack is an impossibility. By day defending aircraft squadrons can, indeed, afford a fairly high degree of protection. Some readers of this book may possibly remember a wonderful description of the way in which Nancy was relieved at one period of the war when that city was suffering grievously from the attentions of the German bombers; it appeared in *La Guerre aérienne* for 6 June, 1918.² The writer of it described how one day the rumour ran in the hard-stricken city: "The *Cigognes* are coming!"; how it brought new hope and fresh courage to the Nancéiens just to know that the greatest of all the great French *chasse* squadrons was coming to their aid; and how in the event the *Cigognes* came and drove the German aircraft from the sky of Southern Lorraine. But at Nancy the German attack was only "local" and in any case no such defence can be expected at night. No doubt the technique of anti-aircraft defence will develop with time, but so, too, will the penetrative power of raiding aircraft, and one cannot expect that the comparative position of the offensive and the defensive will be altered materially from what it was in the last year of the war. In a paper on "The Policy of Bombardment," written early in 1918, M. Laurent Eynac, after reviewing the various methods of protecting a city from air raids, such as barrage fire from anti-aircraft guns, guided by sufficient searchlights, captive-balloons supporting cables (as used, he states, at Venice and Padua), and night-flying *chasse* machines, comes to the following conclusion:—

"The best defence remains the *attack*, and there is no surer protection than to have at your call, to reply to the enemy's blows, a solidly organised air force for fighting and bombing work by day and by night, to give that force good and numerous machines, to provide it with quality as well as quantity, to make its personnel a service *d'élite*. *It is the aerial offensive which will be our safeguard.*" "Neither the space of the ocean," he says in the article, "nor the space of heaven can be closed."³

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. 464; Maurice Thiéry, *Paris Bombardé*, 1921, pp. 277-80.

² It was written by the French pilot René Altmayer, who was himself killed subsequently, and extracts from it are given by M. Mortane in his *Guynemer, the Ace of Aces* (Eng. trans., 1918, pp. 99-109).

³ Quoted in *La Guerre aérienne*, 28 February, 1918, p. 250. "In the air, as on land and sea," says Sir W. Robertson (*From Private to Field-Marshal*, 1921, p. 351), "our best form of defence will lie in the ability to attack."

Self-interest as a motive for moderation.—The knowledge that attack is the only effective defence, and that a belligerent will naturally repay in the same coin which he has received, will be a powerful influence for moderation in air bombardment. It was in part the feeling that *la riposte serait trop facile*, says M. Mortane, that restrained the French authorities in 1917 from organising a great offensive against the interior of Germany.¹ The tendency of the uninformed public to see in all restrictive rules of war so many hampering, unpractical, academic conventions which, as they will quite certainly not be observed by the enemy, should clearly be set aside by ourselves before our sentimentality prejudices the national cause, will be fortunately checked in this matter of air bombardment by a counter-influence of a very obvious kind. It will simply not pay to bomb the enemy's cities at one's good pleasure. The advantage of having, and of maintaining, a *régime* under which the more gross and calamitous varieties of *Schrecklichkeit* are banned, will be apparent to the man in the street—who will be himself affected—and, one hopes, even to the most militarist of Governments. But the rules will have to be practical rules that take account of all the factors, not rules that will look well in a Treaty or Convention, but will be totally unworkable in war.

The probable development of the law of bombardment.—In a later chapter of this book the writer shows in detail how he conceives that the law of air bombardment, both of military and of non-military objectives, may develop along lines that will satisfy alike the demands of air power and those of international law. Some reference has already been made to the nature of the compromise which may thus be effected. Here a few more words may be added to show briefly and in broad terms the general lines of the development which the writer foresees.

Air fighting, it may be premised, will remain legitimate. So, too, will air attack upon military (including naval and flying) *personnel* and *matériel*. The complete prohibition of the air bomb is a possibility which need not very seriously be considered. Any attempt to ban it would simply follow the fate of the Lateran Council's prohibition of the cross-bow in 1139, and of Bayard's and Marshal Saxe's attempted prohibition of the musket at a later date.² Air bombardment of military

¹ *Histoire illustrée*, i. 272.

² See P. Fournier, *La Prohibition par le 11^e Concile de Latran d'Armes jugées trop meurtrières*, in *Revue de Droit International*, 1916, pp. 471-9; J. S. Risley, *Law of War*, 1897, p. 114; J. A. Farrer, *Military Manners and Customs*, 1885,

objectives within a zone of actual, current operations will be practised without (probably) overmuch regard for its possible consequences to civilians and their property in the vicinity. In areas outside such zones greater care will be demanded of air commanders, but, provided reasonable precautions are taken to confine the effects so far as possible to the military targets, bombing airmen will not be responsible for the incidental and inevitable losses suffered by non-combatants in the immediate neighbourhood of the objectives. The responsibility for locating the military objectives where they cannot be attacked without consequential damage to civilian life and property will rest with the belligerent whose citizens suffer. The recognition of that responsibility will, in time, induce belligerents, whose cities and towns are threatened, to remove the military objectives (barracks, military store-houses, munition factories, administrative headquarters of the fighting services) to situations outside the populated centres and to place all anti-aircraft defences well away from such centres. Meanwhile and concurrently with the recognition of the right to attack military objectives wherever situated there will be recognised a right on the part of air power to attack property other than military, subject always to the over-riding proviso that this kind of property is only liable to attack where and when the loss of civilian life involved in the operation is *nil* or practically *nil*. Hence it will come about, as soon as the tendency to evacuate barracks and War Offices and the other military objectives from civilian centres has had time to materialise, that the only legitimate air attacks upon cities and towns, outside the area of actual operations, will be those which can be delivered without any appreciable danger to civilian life. Their legitimacy, that is to say, will depend upon the property or buildings attacked being unoccupied at the time of the attack and, moreover, being so situated, or bombed with such precision, that the damage can be strictly localised. Isolated military objectives—and all military objectives will then, in all probability, be isolated—will, of course, remain liable to attack, but, except those pertaining to the air service, they will sink more and more into the background as the operations of the forces which they support recede to a position of quite secondary importance. Inevitably, before long, the destruction of non-military property, under the conditions

pp. 182, 226. "There is little probability that a convention prohibiting absolutely aerial bombardment will ever be concluded" (J. W. Garner, *La réglementation de la Guerre aérienne*, in *Revue de Droit International*, 1923, p. 390).

outlined, will be a main operation of war. War, in fact, will become a campaign of property-wrecking on the grand scale, without any material loss of human life. Capitalism rather than flesh and blood will suffer from its activities.

Whether a war so conceived and waged will be better or worse than the kind of fighting by land and sea which found its culmination in the colossal butchery, the slow starvation of 1914-18, only time and the event can show. To the enthusiast, at any rate—but the enthusiast is never quite to be trusted—there can be no comparison between the crude, bloody, hopelessly slow, muddled and wasteful mode of forcible settlement which war has become, and the new, scientific, life-sparing method which he makes bold to think will eventually replace it.

Summary of the writer's views.—It will be seen that in this chapter the writer has dealt in general terms with the question of the employment of the air arm against civilian objectives and has considered the possible objections that may be raised, viz. that such "direct action" is not contemplated by any responsible persons, that it would be unlikely to have any decisive effect upon the moral of the people attacked, that it would be stopped *in limine* by defending aircraft and anti-aircraft defences, and that it would constitute, if tried, a breach of international law. In order to complete the picture, he would summarise his views (anticipating some later conclusions) thus: If our city populations are to be saved from calamities almost unimaginable in future wars, and if the claims of air power are at the same time to be satisfied, we shall be forced, sooner or later—and sooner if we are wise—

- (1) To remove from the cities all military objectives.
- (2) To recognise that certain kinds of non-military property, even if situated within cities, are liable to bombardment also, but only under conditions which eliminate or minimise loss of life, that is, in effect, when they are unoccupied.
- (3) To agree to treat railways, railway junctions, termini, and bridges within cities as property of the kind referred to at (2) above and not as military objectives.
- (4) To ban absolutely the air bomb as a weapon of reprisals.

A revolutionary programme, it may be said, perhaps an impossible one. Possibly, but the coming of air power *is* a revolution, and flight itself was "impossible" twenty years ago.

CHAPTER II.

THE LAWS OF AIR WARFARE.

The need for special rules.—In the preceding chapter the writer has endeavoured to show that the coming of air power necessitates a review and revision of the existing rules of war. What has been there stated had reference more particularly to the subject of air bombardment—the subject in which the civilian world is most vitally interested, since it is that in which the revolution brought about by flight will manifest itself in the most appreciable form. It now remains to show why it is better to proceed by creating a new and special code for the air rather than by building upon and adding to the rules already governing naval and land warfare.¹ The conditions under which departure from the rules can be justified are also dealt with in this chapter.

Some publicists, like M. Mérignhac,² would treat air warfare as an accessory of sea or land warfare and apply to it the rules which govern the warfare, on sea or on land, to which it is a subsidiary operation. It is not, in these writers' view, a warfare *sui generis* but one necessarily carried out in conjunction with the operations in the two other elements. They would treat it as a kind of extension or prolongation into the air of maritime or of land fighting, as the case may be. This view would "brigade" air fighting with the sea or land fighting with which it is at present necessarily connected but which, if the signs and portents of the time are true, it is certain as to-morrow's sunrise in time to replace.

¹ That some rules must apply to air warfare need not be argued. Indeed, as Prof. G. G. Wilson points out (*International Law*, 8th ed., p. 281), the very admission of the sovereignty of the air implies that "the general principles as to the conduct of war would also apply to aerial warfare."

² Mérignhac, *Le domaine aérien privé et public et les droits de l'aviation en temps de paix et de guerre*, in *Revue de Droit Int.*, 1914, pp. 205 ff. See Fauchille-Bonfils, *Droit Int.*, 1921, ii., § 1440 (6); J. W. Garner, *La réglementation internationale de la guerre aérienne*, in *Revue de Droit Int.*, 1923, p. 380; and Capitaine de vaisseau Yvon, *La Guerre aérienne*, in *Revue juridique internationale de la Locomotion aérienne*, June, 1924, for criticisms of the views of Mérignhac.

The objection to assimilation is that such a solution of the problem, attractive at first view, is proved upon closer examination to present grave practical difficulties. Air warfare has its own features, legal as well as operational. It is in hard fact *sui generis*. The questions to which it gives rise differ in many respects from those met with in land and sea warfare. There is no escape from the conclusion that in it we are faced with something new, unprecedented, not to be adequately draped in the cast-off garments of permissions and prohibitions known to its elder brothers in the family of war. It is a lusty youngster calling for special consideration and regulation.

The practical objections to applying the rules of land or naval war.—The application to all aircraft, wherever they are operating, of the rules of maritime war, or, on the other hand, of land war, *en bloc*, would create anomalies of many kinds. It is clearly inexpedient to apply to an air force which is serving with an army, which is housed in an army's lines, which is acting under the orders of the commander-in-chief of the army, and carries out some of its duties—e.g. contact patrol—in the very closest co-operation with the land troops, the rules which are applicable to a naval force. In the late war aircraft on many occasions actually performed the duties ordinarily regarded as the monopoly of specific arms of the land service. They took the place of the R.A.S.C. in provisioning Kut in 1916, dropping supplies of all kinds into the besieged town.¹ The Austrians also tried to revictual Przemysl by aeroplane during the first siege; at the end of December, 1914, the Russians shot down an Austrian aeroplane which was loaded with condensed food for the town, and in March, 1915, it was again reported that supplies were being carried to the besieged in aircraft.² Aeroplanes similarly brought up supplies for isolated detachments of troops more than once on the western front: e.g. at Houthoult Forest, in October, 1918, thirteen tons of rations were supplied by air to some Belgian troops who had been cut off from the main army.³ Occasionally, they acted as infantry, "chaperoning" tanks⁴ or skimming over the heads of advancing troops, whose fire they

¹ Sir Percy Lake's dispatch of 12 August, 1916; Edmund Candler, *The Long Road to Baghdad*, 1919, i. 221, 226; Major C. H. Barber, *Besieged in Kut and After*, 1917, pp. 137, 195, 221; Sir C. V. F. Townshend, *My Campaign in Mesopotamia*, 1920, pp. 330-3. Salt, atta, flour, tea, fishing-nets, medicine, etc., were dropped.

² See *Flight*, 8 Jan. and 26 March, 1915.

³ Press report, *Daily Mail*, 9 October, 1918.

⁴ *Ibid.*, 30 September, 1918.

augmented with their machine-guns,¹ or fighting a rear-guard action to delay enemy columns in pursuit of retreating infantry.² Again, they were to be found taking the place of cavalry in attacking and throwing into confusion a retreating enemy army.³ Take the other side of the picture. The Zeppelins which patrolled the North Sea, the British flying-boats and seaplanes which operated against submarines, were for all practical purposes part and parcel of the fleet. The distinction between a large flying-boat and a ship is in truth a rather fine one. The "Porte Baby" flying-boat (which weighed eight-and-a-half tons when loaded) once sailed back by sea the whole distance from the Belgian coast to Orfordness after an encounter in which its engines were badly shot about by German aircraft.⁴ A huge aircraft which can perform such a voyage comes very close to being an ordinary naval vessel of war. The similarity is emphasised by the flying-boats having an anchor—an unseemly thing for an aircraft. On another occasion a French flying-boat, with two officers on board (Enseigne Jacques Lenglet and Second-Mate Dien), after a forced descent in the Mediterranean, spent no less than eleven days, or 267 hours in all, afloat at the mercy of the sea, and, incidentally, for part of the time rode out

¹ Beach Thomas in *Daily Mail*, 18 September, 1916, referring to the fighting on the Ancre; press report in *The Times*, 1 December, 1917, referring to the fighting at Passchendaele and Cambrai; Buchan, *History of Great War*, 1922, iii. 319-20, referring to "contact patrols" generally. In a good many instances airmen were shot down by infantry, while they were flying low to attack ground targets; e.g. the Italian "Ace," Major Baracca, was so shot down on 19 June, 1918 (see *Diario della Guerra d'Italia*, iv. 107).

² Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 376-7, describing how French and British aircraft helped to hold up the German advance when the British front was broken in March, 1918; F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War of 1914-18*), 1923, pp. 229-39.

³ See H. A. Jones, *Over the Balkans and South Russia*, 1923, pp. 124-5, for the great damage inflicted by our aircraft upon the retreating Bulgarians on 21-22 September and 27, 28, and 29 September, 1918. Reuter's Special, Macedonian Front, 30 September, 1918, also describes from personal view the results of the terrible execution inflicted by the Allied airmen upon the retreating Bulgarians in the Kosturino Pass, which was strewn with carcasses of animals, ammunition, motor transport, rifles, helmets, camp furniture, etc. See also W. T. Massey, *Allenby's Final Triumph*, 1920, pp. 143-6 and 183-5, for an eye-witness's description of the effect of the concentrated bombing attacks of our airmen upon the retreating Turk columns in a crowded defile between Tulkeram and Anebta on 19 September, 1918, and on the road from Nablus to Jisr Ed Damie on 21 September, 1918. Gen. Allenby's dispatch of 31 October, 1918 (*London Gazette*, 30 December, 1918), describes the very important results of these attacks. See also the description in H. S. Gullett, *The Australian Imperial Force in Sinai and Palestine* (vol. vii. of *Australian Official War History*), 1923, pp. 705-10; and in F. M. Cutlack, *The Australian Flying Corps* (vol. viii. of same), 1923, pp. 152-66.

⁴ P. I. X., *The Spider Web*, 1919, p. 25.

a tempest. The two officers eventually managed to beach the flying-boat in Corsica.¹

It is clear from these examples that to apply land war rules to aircraft as a whole would cause grave difficulties when aircraft were operating at sea, while to apply maritime law would lead to difficulties not less formidable in the converse case. The nature of the employment of the aircraft makes the general application of either the one or the other body of laws a practical impossibility.

On the other hand, to differentiate between air forces serving with armies and those serving with fleets and to apply land war rules to the former and naval war rules to the latter would be equally open to practical objections.

Operations over land and over sea not separable.—The air is a single element. Land machines do not operate exclusively over land nor naval machines exclusively over sea. The former do constantly travel for long distances over sea; the latter are quite capable of penetrating inland and operating there. Take, on the one hand, such a feat as that of Flight-Commander T. H. England, a naval pilot, in August, 1916, when he flew 43 miles inland in Syria, over a range of mountains 2000 feet high, to bomb the station of Homs.² That flight was not an isolated incident. Sir John Maxwell states in his dispatch of 1 March, 1916, from Cairo, that the French naval seaplane detachment, whose services were placed at his disposal, made many long over-land flights, and that two of them were lost in the course of dangerous excursions over Southern Syria. An Admiralty *communiqué* of 16 September, 1916, recorded attacks by seaplanes upon a railway in Palestine "behind a range of mountains difficult for seaplanes to surmount." Of the converse case of the use of land planes for work at sea examples may also be quoted. Take, for instance, the case of the destruction of the German airship L. 53 in the Heligoland Bight in August, 1918, by a land machine—a Camel—which was conveyed to the scene on a specially decked lighter towed by a destroyer. (The naval aircraft had been unable to ascend to the height, about 19,000 feet, at which the airship was accustomed to cruise.³) The aircraft of one service can, and do, take part in the operations of the sister service. In 1916 and

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 184-92.

² Details of Flight-Commander England's feat are given in the note of the award to him of the D.S.C. in the *London Gazette*, 25 October, 1916. See also C. C. Turner, *The Struggle in the Air*, p. 245, and Wedgwood Benn, *In the Side Shows*, 1919, p. 126.

³ P. I. X., *The Spider Web*, 1919, pp. 230-7.

1917 various squadrons of the Royal Naval Air Service served side by side with the Royal Flying Corps on the western front.¹ Since maritime law is but an expression of the necessities of sea service, while the land war rules have similarly grown out of the practical needs of fighting on land, an arrangement under which the aircraft attached to either service carried with them, wherever they went, the law of that service, would lead to grave difficulties. On the other hand, to make the law applicable depend upon the geographical situation of the machine and to draw a hard-and-fast line at the tide-water limit, would cause uncertainty and confusion.

Difficulties arising in regard to neutrality and treatment of private aircraft.—One can see the nature of the difficulties which would be presented when one considers such a question as that of the entry of neutral jurisdiction. Maritime law allows such entry to naval forces; land war rules forbid it to land forces. It would be anomalous if, in the event of a combined force of naval and land aircraft crossing a neutral frontier, the neutral authorities were bound to pick out and intern the latter, while allowing the former to leave again in due course. The machines might be identical and to ascertain to which service they were attached would, in many cases, be difficult in the extreme.²

It is, however, when one comes to the question of the treatment of civil or commercial aircraft that the greatest difficulties arise. At sea, enemy private property is confiscable; on land, it is not. If air warfare is merely a "prolongation" of warfare on sea and on land, respectively, a private aircraft encountered over the sea ought to be liable to confiscation, whereas over the land it should be subject only to sequestration or requisition. The liabilities of private aircraft would, therefore, vary with their precise location in an element which has itself no boundaries. All international air traffic involving a sea passage as well as a journey at each end over land would be subject to a puzzling variety of rules in war, passing the ingenuity of an insurance office to estimate. No sound principle can be advanced for the difference of treatment which such an arrangement would involve.

"It seems to us," says Professor Garner, "that in the conception of a code of laws for air warfare, it would be a grave error to do as

¹ Sir Reginald Bacon, *The Dover Patrol*, pp. 549-53.

² The difficulties in connection with belligerent entry of neutral jurisdiction are more fully discussed in the writer's *Aircraft in War*, 1914, pp. 65-9.

certain jurists have suggested, and to assimilate air warfare in all respects either to land or to maritime war, or to regard it as an accessory of the one or the other, applying to it the laws of the kind of war in which it co-operates. In reality aerial war is war of a special kind which develops itself independently, in large measure, of land or naval war. Consequently it demands for its regulation special laws and its own rules."¹

The relation of the new rules to the old.—A single and comprehensive code of laws for air warfare is demanded by the practical necessities of the case. This does not mean that that code will not borrow at need from the existing laws, now from those of maritime, now from those of land war. The proposed rules for air warfare drawn up at The Hague in 1923 do, in fact, draw largely upon those sources. Not only do they legislate in some cases by reference to one or other of the Conventions of The Hague of 1907, but they incorporate, with some necessary modifications, many of the principles of the maritime or land war rules in their provisions and on occasion reproduce almost exactly some of the actual terms of the written or customary law of naval warfare. The provisions of Article 53, for instance, relating to the capture of neutral private aircraft, are in many respects merely a reproduction of the maritime law upon the subject of capture of neutral merchant vessels. In Article 56, again, it is provided that prize courts shall deal with aircraft and their cargo in the same way as they deal with merchant vessels and their cargo. The naval law and procedure thus applied are not, however, applied in virtue of the fact that the action giving occasion for their application took place over sea or was carried out by air forces co-operating with naval forces. A new and special code has, in fact, been drawn up; the incorporation in it of some features of the older rules and practice, or the express reference in some of its articles to the applicability to air questions of certain provisions of the existing laws of war and neutrality, does not affect its character as a substantive body of rules for air warfare as a whole.

The general applicability of the new draft code is affirmed in its first article: "The rules of aerial warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water." They apply also, it might have been added, whether at the moment at which the action or omission giving rise to the

¹ J. W. Garner, *La réglementation de la guerre aérienne*, in *Revue de Droit Int.*, 1923, p. 380.

legal question occurred, the aircraft was over or on the land or over or on the sea.

The Air Warfare Rules and the Land Warfare Rules.

—The Air Warfare Rules thus constitute a code of laws for aircraft, distinct from the laws of warfare applicable to land and naval forces, but they require to be supplemented in various respects where no situation peculiar to air warfare arises to demand special legislation. Their necessary background is the general law and custom of war, so far as they exist and are ascertainable, which govern the conduct of all civilised belligerents. They assume the existence of that general law and that traditional custom. If they did not do so, they would find it necessary to incorporate by express provision much that can be omitted when the assumption is made. Rules for the treatment of prisoners of war, of *parlementaires*, of the sick and wounded, for instance, would have to be reproduced in the special code, which would thus be largely a repetition of the terms of existing international conventions. To avoid the necessity for such repetition, the rules contain a specific provision that their *lacunæ* are to be filled by reference to the laws of war and neutrality applicable to land forces, except where the provisions of the rules themselves or the existence of international conventions indicate that reference to maritime law and procedure is more appropriate. The provision is as follows:—

Art. 62.—Except so far as special rules are here laid down, and except also so far as the provisions of Chapter VII. of these Rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the states concerned are parties.

In accordance with the principle here laid down, the land warfare rules would apply to such questions as the conduct of hostilities,¹ non-hostile relations between belligerents, treatment of prisoners and of sick and wounded, relations with enemy civilian populations, and neutrality in general, whenever a case arises for which no special provision is made in the Air Warfare

¹ "There can be no doubt," says Oppenheim, *Int. Law*, 1921, ii. § 214b, "that the general principles laid down in the Declaration of St. Petersburg of 1868, in the two declarations adopted by the First Hague Conference concerning expanding bullets and projectiles diffusing asphyxiating or deleterious gases, in the *Hague Regulations concerning land warfare*, and the like, must find application as regards violence directed from aircraft."

Rules. On the other hand, maritime law and practice will be applicable (again, in the absence of special provision) to questions of visit and search, capture, condemnation, and prize court procedure, and to similar questions in which the land war rules would be obviously entirely inapplicable, such as the question of the laying of mines at sea. The differentiation thus made between the sources from which the materials for filling "gaps" in the Air Warfare Rules are to be sought does not, in practice, lead to the difficulties and uncertainties which might at first sight be feared. The sources in question will mainly be the land warfare rules and customs, and these are already recognised as the sources from which the principles governing maritime war are, in the absence of specific rules, to be drawn. The law of maritime war has not yet been codified to the same extent as the law of land war. There is no body of regulations for the conduct of sea warfare corresponding to the Land Warfare Regulations drawn up at The Hague in 1899 and 1907. In the absence of such regulations, the Powers have agreed ¹ that the principles of the land warfare rules should be applied so far as possible to war by sea; in other words, they have made the law of land war, which is alone fully codified, the code governing in principle, and so far as it is applicable, sea warfare also. The effect of Article 62 of the Air Warfare Rules is to do for air war what the agreement embodied in the *Voeu* of 1907 has done for sea war, and to make the background of the special rules for the new domain—as already for the maritime—the law and custom of the land service.

Their relation to the Convention of 1919.—Any new air code which is adopted may be regarded as supplementary to the code which is contained in the Air Navigation Convention of 1919. The latter is a code of air laws for peace; it provides expressly, in Article 38, that "in case of war, the provisions of the present Convention shall not affect the freedom of action of the contracting States either as belligerents or as neutrals." In view of this provision it would be quite permissible, if it were desirable, to ignore the peace code in drawing up a code for war. Since, however, in war time it is fairly certain that many of the parties to the Convention of 1919 will continue to be at peace as between themselves, and since, moreover, even between those States whose relations in war time are

¹ In the "Final Act of the International Peace Conference," The Hague, 1907, the fourth "*Voeu*" of which was to the effect stated in the text.

those of belligerents to neutrals and neutrals to belligerents, it would be highly inconvenient to abandon completely the system in existence at the outbreak of war, it is desirable that account should be taken so far as possible in the war code of the rules in the Convention of 1919 relating to the classification, nationality, registration and marking of aircraft. For this reason and to this extent a code for war should borrow from the code of 1919.

Circumstances in which departure from the rules is legitimate.—It is unnecessary in a book devoted specially to air warfare to deal at any length with the question of the nature of the laws of war in general and the extent to which they are subject to "military necessity." It will suffice to state briefly that they may be set aside in certain circumstances which fall broadly into four categories, or, if "laws" is held to include "usages," into five. These categories are:—

- (1) *Reprisals* for breaches of the laws of war on the part of the enemy: e.g. the Allies' resort to the use of poison gas in retaliation for Germany's unlawful employment of it.
- (2) Action *in the nature of reprisals against a neutral State* which has failed to maintain its neutral obligations: e.g. the action of Japan in 1904 in cutting out the Russian cruiser "Reshitelni" from the Chinese harbour of Chifu, when it was found that China was unable or unwilling to disarm the vessel in accordance with the requirements of international law.
- (3) "*Necessity of war*" as a ground for departing from a *prohibitory rule* which contains an *express provision* that it is subject to abrogation on that ground: e.g. Article 23 (g) of The Hague Land War Rules, which prohibits the seizure or destruction of enemy property unless such seizure or destruction is imperatively demanded by the necessities of war, and Article 15 of the Geneva Convention, 1906, which prohibits the diversion of the enemy's fixed medical establishments from their proper purpose except "in case of urgent military necessity," when previous arrangements must be made for the welfare of the sick and wounded displaced.
- (4) "*Necessity of war*" as justifying departure from a *positive, non-prohibitory rule of conduct*, which,

though it does not contain an express reference to military necessity, must be read as subject to such necessity, simply because it would otherwise be impossible of application to the difficult conditions of actual service, and must be treated in fact as an exhortatory rule or standard of conduct to which belligerents are expected to conform so far as the necessities of war permit: e.g. Article 46 of The Hague Land War Rules, which prescribes respect for, *inter alia*, private property.¹

- (5) *Usages* of war which cannot be considered to have hardened into generally accepted laws: e.g. the bulk of the rules of maritime war laid down in the Declaration of London, 1908, the preliminary provision of which stated that the rules represented "generally recognised principles of international law"—a statement sufficiently disproved by the action of the British House of Lords in refusing to agree to the legislative measure required to give effect to the Declaration.²

Save as above stated, there is no power to set aside a definitely prohibitory law of war,³ and no military necessity whatever could justify the use of poison in the first instance or the deliberate killing of surrendered, defenceless men.

The question of reprisals.—It is through the door of reprisals that evasions of the rules are especially to be feared. The air arm suggests itself as the weapon *par excellence* for retaliating upon a defaulting foe and bringing him to his senses. Its penetrative power and capacity to strike directly at the seat of the enemy Government mark it out as the obvious and perfect instrument of reprisals. Again and again in the great war the use of aircraft for chastising the enemy for his misdeeds was demanded by popular opinion, as reflected in the press, and not in the Allied countries alone. The call for such action was particularly loud and insistent in England after the daylight air raid of 13 July, 1917, upon London, but in truth it was hardly ever entirely still. Usually it took the form of a demand for ruthless bombardment of enemy towns, but

¹ As regards necessity of war, see Westlake, *Int. Law*, ii. 116; Sir F. E. Smith, *Int. Law* (Phillipson's ed.), 1918, p. 211; De Visscher, *Les Lois de la Guerre et la Théorie de la Nécessité*, in *Revue de Droit Int.*, 1917, pp. 74 ff.

² As regards usages of war, see Oppenheim, *Int. Law*, ii. § 69.

³ "Military necessity can have no force as against positive prohibitions," says Dr. Coleman Phillipson, *Int. Law and the Great War*, 1915, pp. 137-8.

occasionally reprisals of a different kind were suggested. Reprisals against either the crews of the aircraft involved or against unfortunate Germans resident in England seemed to a certain type of militarist mind to be a justifiable way of stopping the German air raids. Lord Fisher was with difficulty persuaded to withdraw his resignation when Mr. Churchill and the Government declined to adopt his suggestion that, for every civilian killed by bombs from aircraft, a hostage from the German population in our hands should be shot.¹ Lord Charles Beresford suggested in the House of Commons that the German raiders should be placed on trial, if captured, for the murder of women and children in undefended places.² Major-Gen. A. A. Kinloch urged that even trial should be omitted; the crews of the captured aircraft should be shot immediately: "no mercy should be shown."³ One of the Russian Generals of the old school—Gen. Plehve—went further still. He proposed to string up a German airman who bombed his temporary headquarters—a perfectly legitimate target. Gen. Knox, who was present at the time, 18 January, 1915, at Mogilnitsa, records that Gen. Plehve threatened that, "if the airman was brought down, he would hang him up to the highest tree in the village," his action being "a scandalous breach of the customs of war."⁴ A similar threat to treat German airmen captured in possession of incendiary bombs in summary fashion appears to have been made by other Russian commanders, but it is doubtful whether it was ever carried out.⁵

¹ Churchill, *The World Crisis*, 1915, 1923, pp. 63-4. Lord Fisher's own reference to the matter is: "Somewhere about January 15th, 1915, I submitted my resignation as First Sea Lord to Mr. Churchill because of the supineness manifested by the High Authorities as regards Aircraft." He does not say in what the supineness lay, but a little later repeats his well-known saying in regard to the imbecility of moderation in war (*Memories*, 1919, pp. 124, 127).

² See *Flight*, 19 February, 1915, which supports editorially Lord Charles's views.

³ See letter in the *Daily Mail*, 17 February, 1916.

⁴ Major-Gen. Sir A. Knox, *With the Russian Army*, 1914-1917, 1921, i. 230.

⁵ MM. Mortane and Daçay in their *Histoire de l'Aviation allemande (La Guerre aérienne*, 4 April, 1918, p. 343) state that the crew of a German airship which bombed Libau on 26 January, 1915, were treated by the Russians, who captured the airship, not as prisoners of war but as criminals. So, too, M. C. Lafon (*La France ailée en Guerre*, pp. 181-2) states that "the Russians, outraged by the sight of systematic German attacks with incendiary bombs, designed to destroy the property of non-combatants, decided to shoot any aviator whose machines contained such bombs. *This rule, firmly applied, gave good results*, and led the Germans to understand that it was not only more honourable but also more prudent to observe the laws of war and to attack only military objectives." The reference appears to be to the spring of 1915. Later, he records under the date of 20 August, 1915, the capture near Vilna of a Zeppelin and its crew of ten persons, with incendiary bombs in the cabin, but does not state whether the crew were, in fact, shot. As early as on 6 September, 1914, a crew of a Zeppelin which was captured by the Russians,

Germany showed more forbearance. It is noteworthy that Wing-Commander C. E. H. Rathborne, the Lieut.-Col. who, as stated in the German *communiqué* of 16 April, 1917, was shot down in the reprisal raid of 14 April, 1917, upon Freiburg, was treated as a prisoner of war, although the German authorities considered that raid an entirely illegitimate operation against an open town. The idea that the enemy was determined to break every rule of warfare and that the only means of deterring him was to pay him in his own coin, to give him a taste of his own medicine, to exact a tooth for a tooth and an eye for an eye, was not unnatural in a state of public opinion which was mostly entirely uninformed and grossly prejudiced. The popular conception of the benefits to be derived from adopting a policy of air reprisals was, perhaps, encouraged by the loose use of the term in some of the official *communiqués* in connection with air raids.

The loose use of the term "reprisals."—Reprisals should mean the response to an enemy's violation of the laws of war by a violation on one's own side.¹ Actually the term was applied, especially in France, to warlike acts which were, indeed, the answer to alleged violations of international law by the enemy but were themselves quite legitimate and would have been justified even if no question of reprisals had arisen. In the French *communiqués* one finds frequently the statement that military establishments in a named German town had been bombed in retaliation for some German attack upon an open French town. In some cases the reprisal attack was accompanied by the dropping of proclamations or leaflets stating that it was in the nature of a retaliation. In the raid of the night of 1 May, 1917, upon Trèves, for instance, tracts were dropped with the inscription "Zur Vergeltung des Bombenwurfes auf die Städte Châlons und Epervay."²

Karlsruhe, Saarbrücken, Freiburg, Frankfurt-on-Main, Stuttgart, Coblenz, Baden, and Rastadt were subjected to

after dropping bombs on Russian villages, feared that they would be "shot as spies" (as "war criminals" is intended), but were in fact treated as ordinary prisoners of war (C. Lafon, *Les Armées aériennes modernes*, 1916, p. 258). It is improbable that the Russian threat was in fact carried into execution. It is stated in Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (42), that when a Zeppelin was captured by a Russian warship after bombarding an undefended town, in January, 1915, "the Russian Government thought for an instant of treating the crew as pirates, but quickly renounced this idea (Russian *communiqué* of 27 January, 1915)." See also Lacroix, *Le Domaine aérien et la Guerre*, pp. 230-3, and Coleman Phillipson, *International Law and the Great War*, 1915, p. 179.

¹ See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1013, and authorities there cited.

² *La Guerre aérienne*, 5 July, 1917, p. 531; J. Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 313.

"reprisals" raids by French airmen. Now all these towns contained important military objectives, and in some cases it is definitely stated in the *communiqués* that such objectives were aimed at; the raids were, therefore, legitimate acts of war and did not need to be justified *quâ* reprisals. The same remark is applicable to the Italian raids of 4 April and 14 August, 1917, which were not true reprisals. Gen. Cadorna's report of 5 April, 1917, stated that enemy aircraft had bombarded the day before the coastal zone between Grado and Monfalcone, causing material damages to some civilian dwellings, and that *ad immediata rappresaglia* Italian seaplanes bombarded the enemy's aerodrome at Prosecco and the Austrian-Lloyd munition-works at Trieste. Again on 14 August, 1917, after an Austrian raid upon Venice, in which a civil hospital was hit and some of its inmates killed and wounded, Italian squadrons set out *ad immediata ritorsione* and bombed the air bases and the warships on the enemy's coast.¹ The explanation of the reference to reprisals in the French cases, at least, is that it was the normal French policy to abstain from raiding towns in the interior of Germany, on the ground that *la riposte serait trop facile*.² When, however, the German airmen attacked some open French town behind the lines, the French on their side replied with what was, not altogether correctly, called a reprisal raid upon some town in Germany. As M. Lafon observes, the word "reprisal" was consequently used far too loosely in the French reports and led to the belief that the high command was unduly passive in the matter of air raiding.³ That it was used loosely in the British service also is shown by the fact that No. 216 Squadron R.F.C., which was formed from the R.N.A.S. in September, 1917, to carry out long-distance raids from Ochey into Germany, was commonly known as the "Reprisals Squadron."⁴ Its duty was not really the execution of reprisals at all.

Reprisal raids were usually, but not always, the reply to enemy air raids. The British raid of 14 April, 1917, upon

¹ *Diario della Guerra d'Italia*, ii. 1137; iii. 358. Again, on 30 June, 1917, after an Austrian air raid on Venice, Italian seaplanes set out, we are informed, *ad immediata ritorsione* for this attack and bombed "the industrial quarters" at Trieste (official statement issued by the *Agenzia Stefani*, see *Diario della Guerra d'Italia*, iii. 170). If the reprisal raid was not directed against military objectives, it was a case of true reprisals, and that such was its intended character appears from a further statement issued by the *Agenzia Stefani* on 3 July, 1917, stating that on 2 July leaflets were dropped on Trieste informing the Austrians that the raid of 30 June was a reply to the barbarous Austrian attacks on Venice (*Diario*, iii. 184).

² J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. 272.

³ C. Lafon, *La France ailée en Guerre*, p. 121.

⁴ E. Middleton, *The Great War in the Air*, iv. 167.

Freiburg-in-Breisgau was a reprisal for the torpedoing of the "Gloucester Castle" and the "Asturias."¹ "It was intended," said Lord Curzon in the House of Lords on 2 May, 1917, "as a deterrent to prevent the enemy from repeating his crimes against humanity." The squadron which carried it out dropped a leaflet in German to the following effect: "As reprisal for the sinking of the hospital ship 'Asturias,' which took place on 20-21 March, 1917."² The raid was a true reprisal inasmuch as non-military objectives appear to have been attacked. At any rate, the German official report of 17 April, 1917, stated that the enemy airmen selected especially as objectives the new municipal theatre, institutes and infirmaries, though it is unlikely in the extreme that infirmaries were aimed at. Conversely, reprisals to enemy air raids occasionally took a form other than that of reprisal bombardment. It was in retaliation for the Austrian raids upon Venice that the Italian Government seized, on 25 August, 1916, the "Venetian Palace" at Rome, the residence of the Austrian Minister to the Vatican. The Royal decree upon the subject, after citing the historic connection between the Palace and the old republic of Venice (to which it formerly belonged), and the devastations committed without military reason in that city by the Austrians, declared the building confiscated to the Italian State *a titolo di rivendicazione italiana e a titolo di giusta rappresaglia*.³

The necessity for a ban upon reprisals, both acknowledged and veiled.—Seeing how easy it is for a country at war to persuade itself that the enemy's crimes call to high heaven for requital, that nothing short of acts similar to his own will serve to deter him from continuing them, and that in the air arm there exists a peculiarly effective instrument for forcing "a nation of coward-bullies"⁴ to respect the laws of war, one is inclined to doubt the utility of any restrictive rules of air warfare which do not begin with a settlement of the question of reprisals. While it is left an open one, as it is at present, there must remain always a wide loophole for escape from all restrictions. Is it too much to suggest that reprisal bombardment should be entirely banned? Yet even such a prohibition would not by itself eliminate all danger. A State

¹ Although only the "Asturias" was mentioned in the leaflet that was dropped, the "Gloucester Castle" was also referred to by Lord Curzon in his defence of the raid in the House of Lords (see *The Times*, 3 May, 1917).

² Statement by Dr. Macnamara on 9 May, 1917.

³ *Diario della Guerra d'Italia*, ii. 350; Fauchille-Bonfils, *Droit Int.*, ii. § 1026

(1).

⁴ Leader in the *Daily Mail*, 24 August, 1918.

may have agreed to the prohibition ; it may observe it in the letter ; and it may drive a coach and four through the spirit of it. It may express horror at the suggestion that it is resorting to reprisal raids ; it may be particularly careful not to call its bombardments by that name ; it may keep within the four corners of the law ; and yet its raids may be in effect reprisal raids and nothing else. Witness what Germany threatened after the " Baralong " affair.¹ In effect she threatened to strain to the limits the exceedingly elastic war right of air bombardment, in order to punish England for the alleged misdeeds of the English sailors. After the " Baralong " case, in which, it will be remembered, British naval officers and men were accused of shooting the crew of a German submarine after capture, a demand arose in the Reichstag for a policy of reprisals, and in a Note of 10 January, 1916, the German Government announced its intention of taking steps to satisfy that demand. A White Book presented to the Reichstag in August, 1916, disclosed the nature of these steps. After stating that " of course the German Government declined to take reprisals for the act of the British sailors in the " Baralong " case by measures of the same nature—for instance, by shooting British prisoners of war "—the White Book announced that it had been decided to abandon the policy hitherto followed in the air raids upon England :

" Whereas, up till now, the unavoidable risk of injury to the civil population in the course of Zeppelin raids for military ends had been taken particularly into consideration, such scruples could no longer prevail in the face of the ' Baralong ' murders. From now onward the airship will be used as a weapon against England ' regardless ' (*rücksichtslos*), within the limitations of international law. In the event of any airship dropping destructive bombs on London or other English towns which are defended or contain establishments of a military character, England must remember the ' Baralong ' case ! " ²

The prohibition of reprisals interlocked with restrictions upon bombardment.—In truth the questions of reprisals and of the restriction of air bombardment are so closely interlocked that it is of little use to lay down rules regulating bombardment unless reprisals by air raid are banned, and it is of less use to prohibit such reprisals so long as the rules governing bombardment are so loose and unsatisfactory that they can be stretched to cover veiled reprisals. In the late

¹ For the " Baralong " affair, see Buchan, *History of the Great War*, ii. 484-5 ; and J. A. Hall, *Law of Naval Warfare*, 1921, p. 117.

² See extract from the White Paper in *Zeppeline über England*, 1916, p. 151, and also in *The Times*, 15 August, 1916.

war there was, indeed, little difference, except in name, between air raids which were reprisals and those which were not. The name was, however, all-important, at any rate in the popular estimation. After the raid on Freiburg of 14 April, 1917, already referred to, strong protest arose in England against the adoption of a policy which involved attacks on civilians.¹ Already the Bishops had disclosed unmistakably the attitude which they took up in regard to the question of air reprisals. The Upper House of Convocation at Canterbury, on 17 February, 1916, passed a resolution, *nem. con.*, condemning "a policy of reprisal which has as a deliberate object the killing or wounding of non-combatants." The motion, which was made by the Archbishop of Canterbury, was opposed by the Bishop of Bangor, who said that "he believed that if 100 aeroplanes started from our shores and dropped bombs all over the rich business parts of Frankfurt, where a great part of the wealth of Germany was concentrated, it would have a profound effect throughout Germany, and the German people would at once say that the sending of Zeppelins here was a blunder." His opposing motion was not seconded and, therefore, failed.²

Yet when the Rhine towns were handled in 1918 as severely as Freiburg had been in 1917—when, for instance, Mannheim was not only bombed but had its streets swept with machine-gun fire from the air on the night of 25 August, 1918,³ there was no indication that episcopal doves in this country were in the least fluttered. One can only conclude that public opinion ceased to be intrigued when the word *reprisals* was no longer used. Sometimes there is more in a name than the poet imagined.

The solution.—The only solution of the difficulty is, first, to regulate air bombardment by rules that are simple, reasonable, practical, and not a standing invitation to evasion or abuse; and, secondly, to prohibit absolutely any departure from those rules on the plea of reprisals. The suggestion that bombing reprisals should be allowed when they are directed at "edifices even without military interest if the persons responsible for the irregularity complained of are in those buildings,"⁴

¹ See, e.g., the letter of the Bishop of Ely in *The Times*, 23 April, 1917, and Mr. Molteno's speech in the House of Commons on 24 April, 1917, *The Times*, 25 April, 1917. The Freiburg raid was justified by Bishop Welldon in *The Times*, 4 May, 1917, and by Sir T. E. Holland in *The Times*, 5 May, 1917.

² *The Times*, 18 February, 1916.

³ Sir F. H. Sykes, *Aviation in Peace and War*, 1922, p. 91.

⁴ See Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 560.

as, for instance, in the French raids upon Karlsruhe and Stuttgart appears to the writer to be one that is likely to lead to a whole vicious circle of barbarities.

The plea of superior command.—A further question which may affect (*inter alios*) military airmen ordered to carry out bombing raids of a kind denounced by the enemy as illegitimate, namely, whether the plea of superior command is a good answer to a charge of war crime, is one of much difficulty. It is unnecessary here to consider it at any length, but it may be stated that the great majority of jurists hold that such a plea is no good answer to the charge that the individual arraigned has violated the laws of war. The opposite view is, indeed, advanced in the British and American manuals on the laws of land warfare,¹ but there are very great difficulties in the way of its acceptance. As Mérignhac points out,² it involves in effect the complete abandonment of the right to punish violations of the laws of war, for the ultimate author of an order is never, in fact, captured. It is noteworthy that in the Washington Treaty of 6 February, 1922, "for the protection of the lives of neutrals and non-combatants at sea in time of war," the five great Powers concerned (the United States, the British Empire, France, Italy, and Japan) have expressly agreed (in Article 3) that "any person in the service of any Power who shall violate any of these rules, whether or not such person is under the orders of a Governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found." There is no logical reason why this principle should be rigidly confined to the sole case of breaches of the law of war in regard to operations against sea-borne commerce.

Bombing airmen and war crime.—On the other hand, it is only for indisputable offences against the laws of war that an enemy pilot or other military individual may be punished on

¹ The British *Land Warfare*, § 443, states: "It is important to note that members of the armed forces who commit such violations of the recognised rules of warfare as are ordered by their Government or by their commanders are not war criminals, and cannot therefore be punished by the enemy." The American *Rules of Land Warfare*, § 366, state: "Individuals of the armed forces will not be punished for these offences in case they are committed under the orders or sanction of their Government or commanders."

² Quoted in Garner, *Int. Law and the World War*, ii. p. 487. The whole question is very fully discussed by Garner, *loc. cit.*, pp. 483-8, and also in one of its aspects by R. F. Roxburgh, *Submarines at the Washington Conference*, in the *British Year Book of International Law*, 1922-23, pp. 150-8.

capture. In international law as in municipal law intention to break the law—*mens rea*—or negligence so gross as to be the equivalent of criminal intent, is the essence of the offence.¹ A bombing pilot cannot be arraigned for an error of judgment. There must have been on his part the intention to do something which he or his superior authorities—for the *mens rea* may be theirs, not his—knew, or could be expected to know, to be prohibited. It is not enough that the authorities into whose hands he has fallen regard the act as prohibited; it must be one which he or his superiors either knew to be wrong or which was, *in se*, so palpably and unmistakably a wrongful act that only gross negligence or deliberate blindness could explain their being unaware of its wrongfulness. An instance in point would be the deliberate bombing of a hospital marked with the Red Cross (or the protecting sign for civil hospitals) visible at the height from which the bombs were dropped; or the bombing of a hospital from a greater height if it could be established that, in fact, the airman knew that his bombs would be almost certain to hit it and yet deliberately or negligently ignored that probability. On the other hand, to bomb a military objective although incidentally a hospital in the vicinity might be damaged could not legitimately be made the subject of a charge of war crime, except in very extreme cases in which gross carelessness in the bombing and the failure to take reasonable precautions could be established. In all such cases the conditions under which the attack took place, including the state of the weather and the height at which the airman was compelled to fly on account of anti-aircraft fire, etc., would have to be taken into account in any consideration of his liability to be arraigned. It is beyond question that in almost every instance in which hospitals were bombed in the great war, there was no intention whatever to attack them, and consequently there was lacking that basis of criminality upon which an arraignment for a breach of the laws of war must be founded. Grave injustice may be done to a captured airman unless the authorities with whom the decision as to his fate rests try to put themselves in the position of the captive or his superiors and to make allowances for the difficulties under which they inevitably acted.

¹ Compare the principle of English criminal law that *malice* or *criminal intention*, which is the essence of a crime, may be either *active* (i.e. deliberate) or *passive* (i.e. displaying culpable inattention or negligence). (See S. F. Harris, *Principles of the Criminal Law*, 1912, pp. 11-12).

CHAPTER III.

THE OPENING OF HOSTILITIES.

The first blow.—Since it is probable that wars will be opened in future with action by the air arm, it is important to define clearly the law affecting the war rights of aircraft, applicable to the commencement of hostilities. The belligerent who delays his stroke at the outset may sacrifice an inestimable opportunity. If, on the other hand, he strikes too soon he may lay himself open to a charge of treachery.

The Japanese stroke in 1904.—Such a charge was made by Russia against Japan in 1904. Relations between the two countries had been strained but war had not been actually declared when, on the night of 8-9 February, 1904, a Japanese torpedo flotilla delivered a sudden attack upon the Russian warships lying in the harbour of Port Arthur. Two battleships and a cruiser were seriously damaged.¹ The Tsar's Declaration of War of 10 February accused Japan, in effect, of delivering a treacherous blow before giving warning of her intention to resort to warlike action.

Under the rules of international law which existed in 1904 it cannot be held that Japan was guilty of this charge. "Russia's charge," says T. J. Lawrence, "deserves no serious consideration."² The conclusion of F. E. Smith and N. W. Sibley is the same.³ Japan's declaration of war was not addressed to Russia until 11 February, it is stated in Fauchille-Bonfils, but "it may be maintained with some foundation that before the 8th February, namely, on the 6th, Japan had addressed to Russia a warning that was the equivalent of a conditional declaration of war."⁴ This was the Note which the Japanese Ambassador at St. Petersburg handed to the Russian Minister announcing the dissolution of diplomatic relations and his

¹ *The War in the Far East*, by the Military Correspondent of *The Times*, London, 1905, p. 49.

² T. J. Lawrence, *War and Neutrality in the Far East*, 1904, p. 34.

³ F. E. Smith and N. W. Sibley, *International Law as Interpreted during the Russo-Japanese War*, 1905, pp. 57-64.

⁴ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1030.

intention to leave Russia. Moreover, it is stated that on 8 February the Russian gunboat "Korietz" had already opened hostilities by firing at Japanese vessels. It is certain, as Lawrence points out, that the practice of modern war (before 1907) did not make a declaration of war necessary; and, as Smith and Sibley point out,¹ the departure of a diplomatic staff was in itself a warning to be on guard.

The position to-day.—To-day, a different opinion of a repetition of Japan's action would have to be given. The international law upon the subject was amended in 1907; or rather a written law then superseded the former customary or common law of nations. The mere rupture of diplomatic relations would not now, in itself, be sufficient notice to the other party to a dispute that a State intended to resort to war.

The Hague Convention upon the subject.—The present international law upon the subject is contained in the Convention relative to the opening of hostilities, signed at The Hague in 1907.² The operative provisions are:—

Art. 1.—The contracting Powers recognise that hostilities between them must not commence without a previous and explicit warning, in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war.

Art. 2.—The existence of a state of war must be notified to the neutral Powers without delay, and shall not be held to affect them until after the receipt of a notification, which may, however, be given by telegraph. Nevertheless, neutral Powers may not rely on the absence of notification if it be established beyond doubt that they were in fact aware of the existence of a state of war.

It will be observed that no period of grace is prescribed in these rules. The blow can follow hot-foot upon the declaration of war or the expiration of the ultimatum containing the conditional declaration. A proposal that hostilities should not be begun until at least twenty-four hours had elapsed since the declaration or the time announced in the ultimatum was defeated at The Hague Conference of 1907. It is, of course, the party who strikes first who is bound to give the warning.³

A written notification necessary.—It does not follow that, because no period of grace is necessary, a would-be belligerent is entitled to dispatch at one and the same time a

¹ Smith and Sibley, *op. cit.*, p. 64.

² The following great Powers have ratified the Convention: Great Britain, France, Germany, Austro-Hungary, Russia, Japan, and United States of America. Italy signed but did not ratify.

³ See the writer's *War Rights on Land*, 1911, pp. 23-4.

telegraphic declaration of war and the air force which will begin the war so declared. The first Article of the Convention contemplates the delivery of some written document into the hands of the party attacked before the attack falls. As Oppenheim points out,¹ the express reference to the telegraph as a permissible method of notifying neutral Powers under the second Article, indicates that, in the absence of any similar reference in the first Article, telegraphic, and still less telephonic, communication of the declaration would be insufficient.

A sudden stroke still possible.—There is nothing, however, to prevent an intending belligerent State from making arrangements beforehand for the delivery by its Ambassador or Minister, either on receipt of telegraphic or telephonic instructions *ad hoc* or at an hour or minute precisely fixed in earlier secret instructions, of a written declaration of war previously prepared, signed, and held ready for such an emergency. The moment that declaration is received by the other State's proper authorities—normally its Foreign Office—the first State would be justified under the strict letter of the Convention in dispatching its air squadrons. Their actual dispatch upon their warlike errand must be regarded as the opening of hostilities and could not legitimately precede the delivery of the declaration. But, provided it takes place after—if only by a fraction of a second—such delivery, it cannot be considered to be unlawful as the Convention stands. As the British Land Warfare Regulations (paragraph 8) state, “sudden and unexpected declarations of war for the purpose of surprising an unprepared enemy are in no wise rendered impossible,”² and the translation of such declarations into deeds remains equally possible. Clearly, however, an air attack suddenly delivered under circumstances in which the other State had no reason to suspect a violent interruption of negotiations might come very near to treachery, and it is difficult to believe that any civilised State would seek to gain the advantage of the first blow by violating the whole spirit of the Convention in such a way. A sudden stroke immediately upon the expiry of a clear and unconditional ultimatum would be less open to criticism.³

¹ Oppenheim, *International Law*, 1921, ii. § 94.

² Edmonds and Oppenheim, *Land Warfare*, p. 15. Practically identical words are used in the American official *Rules of Land Warfare*, 1914, paragraph 20.

³ For a State which is a member of the League of Nations a sudden blow of the kind in violation of the terms of the Covenant would, of course, be gravely reprehensible, but provided the State waits for the prescribed period (Art. 12 of the Covenant), it is perfectly free to open war suddenly where a settlement has not been reached.

Reconsideration of the question of delay desirable.—It is very much to be desired that the proposal made by the Netherlands at The Hague in 1907, for a delay of twenty-four hours before a declaration of war is translated into action, should be re-considered under the new conditions resulting from the application of flight to warlike purposes. That proposal was defeated because it was not considered "reconcilable with actual military exigencies."¹ Are the military objections still so great as to outweigh the advantages which a period of grace would confer? It may be that they have been intensified rather than relaxed. The situation has changed since 1907, and the danger of a sudden stroke, essentially treacherous yet within the letter of the law, is greater now than then. There is, further, the consideration that the very danger of such a stroke, though it may not actually fall, will tend to create in a period of acute crisis just that atmosphere of mutual suspicion and distrust which is most dangerous to the settlement of an international dispute. The nations whose relations are strained will see in every innocent aircraft, of whatever nationality, the sinister emissary of the possible enemy. One remembers how a Berlin official statement of 3 August, 1914, charged French aviators with flying over the Rhine Provinces on 1 August and throwing bombs on Nuremberg on 2 August, 1914.² Both charges were unfounded, yet possibly they were believed by official Germany at the time. The advantages to be won, not only by "getting in the first blow," but by ascertaining what the other State is doing in the way of mobilisation and precautionary troop movements, will necessarily be an incentive both to aircraft action for these purposes and—perhaps a more dangerous feature—to the harbouring of the suspicion that the other party's aircraft are intending to resort to such action. For those States, at least, which are members of the League of Nations, it might be practicable to supplement the provisions of the Covenant which are aimed at the prevention of aggression by an undertaking to defer warlike action (including the dispatch of military aircraft for reconnaissance) until a defined period has elapsed after an actual declaration of war. It must be confessed, however, that the question

¹ Blue Book, *Protocols of the Eleven Plenary Meetings of the Hague Conference of 1907*, Cd. 4081 of 1908, pp. 120-3.

² See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1031 (4). The charge was categorically denied by M. Viviani at the time, and so far as Nuremberg is concerned, was admitted by the Burgomaster of that town, in a letter of 3 April, 1916, to have been without foundation. See Lacroix, *Le Domaine aérien et la Guerre*, pp. 182-7, and *La Guerre aérienne*, 1 November, 1917, p. 803.

bristles with difficulties. One can conceive circumstances in which the existence of a period of grace would give rise to situations of an impossible kind. An intending belligerent might utilise the delay, for instance, to assemble his aircraft carriers at some place, outside territorial waters, from which the aircraft could deliver a staggering blow upon a vital point at the moment the waiting period expired; is it conceivable that, war being already existent though in a state of suspended animation, the other belligerent would be content to allow that menacing assembly or concentration to take place unimpeded? In any case, the giving of an undertaking not to strike for twenty-four hours or any other definite period would not remove all possibility of danger and misunderstanding. There would remain the possibility that the undertaking given might be actually broken, that mutual suspicion would be harboured of an intention upon the other State's part to break it, that there might be on either side the honest belief or the unscrupulous pretence that it had been broken. But at least one kind of incident—the one most savouring of treachery and most likely to arise, namely, the sudden blow that is simultaneous with an unexpected declaration of war—could not then occur, as it can now, without a definite breach of international law and treaty bond being involved. It is a question for the consideration of statesmen and of naval, general, and air staffs whether the pros or the cons of any system of delay deserve the greater weight in the practical solution of the problem.

Effect of outbreak of war upon air relations.—A word must be added in regard to the effect of the outbreak of hostilities upon air communications; its effect upon the relations of the parties generally need not be considered in a book such as the present one.¹ The peace-time air transit between the States concerned may have been carried on under any one of three sets of conditions. The States may have been parties to the Air Navigation Convention of 13 October, 1919;² they may have concluded as between themselves a special bipartite air transit agreement; or they may have been bound neither by the general Convention of 1919 nor by a special agreement and may have admitted one another's aircraft to enter their respective jurisdictions under an *ad hoc* authorisation for each case of entry. In the first case, they are free to adopt such

¹ See on this subject Oppenheim, *Int. Law*, 1921, ii. §§ 1002-1022.

² The present (August, 1924) parties to the Convention are: Belgium, Bolivia, British Empire, France, Greece, Portugal, the Serb-Croat-Slovene State, Siam, Japan, Persia, Bulgaria, Italy, Czechoslovakia, Roumania, Uruguay.

measures of prohibition or control of air entry in the event of war as they may decide. Article 38 of the Convention of 1919 provides that—

“In case of war, the provisions of the present Convention shall not affect the freedom of action of the contracting States either as belligerents or neutrals.”

In the second, in the absence of any express provision in the agreement for its continuance in the event of war, it will necessarily be abrogated or suspended. An agreement of the kind is unlikely to contemplate the possibility of a rupture between the parties (that being a contingency which, like the mythical Queen of Spain's legs, is tactfully assumed in peacetime diplomatic communications to be non-existent), and as such an agreement belongs to the category of treaties automatically suspended or annulled by the outbreak of war,¹ the parties resume freedom of action to prohibit or control air entry upon the cessation of peaceful relations. In the third of the three cases referred to, the same freedom of action is obviously enjoyed.

The air entry allowed in the Convention of 1919 and in the special agreements commonly drafted is air entry for aircraft other than military, customs and police aircraft, and the Convention provides (in Article 32) that, even in peace time,

“no military aircraft of a contracting State shall fly over the territory of another contracting State nor land thereon without special authorisation.”

The possession by a State of sovereignty over the atmosphere above its territory and territorial waters necessarily carries with it the right to exclude the public aircraft of another State, and that sovereignty must be held to exist whether or not the State concerned is a party to the Convention of 1919.

Enemy private aircraft in belligerent jurisdiction.—It may happen that on the outbreak of war civil or commercial aircraft of the enemy country are within a State's territory in virtue of their right of entry either under the Convention of 1919, under a separate air Navigation Agreement, or under *ad hoc* authorisation. (The contingency of the presence of enemy public aircraft in similar circumstances may be disregarded, as being improbable in the extreme.) What is the position of such aircraft and their crews?

¹ See Oppenheim, *Int. Law*, 1921, ii. § 99, and paper by Sir Cecil Hurst in the *British Year Book of International Law*, 1921-22, pp. 37-47.

Their position differs from that of enemy merchantmen and their crews. Under one of the Conventions of The Hague of 1907,¹ the contracting States have agreed that it is desirable (not obligatory) to allow enemy merchant vessels in port on the outbreak of war to depart freely (naturally, with their crews), and this Convention prohibits the confiscation of such vessels, which, however, may be detained, for restoration upon the conclusion of peace, or requisitioned upon payment of compensation. No similar Convention applies to aircraft. A belligerent is, therefore, at liberty, if he so decides, to seize and confiscate all enemy aircraft within his jurisdiction. He is equally at liberty, of course, to allow them to depart, and, seeing that they have placed themselves within his power in the course of business and in good faith, and that his own aircraft are likely to be similarly treated in the enemy country, he may be disposed to waive his strict right to seize them.

Enemy civil airmen in belligerent jurisdiction.—If they are permitted to depart, their crews will naturally accompany them; otherwise the concession may be a dead letter, for it is obvious that pilots of the belligerent's own nationality would not be permitted to enter enemy jurisdiction and leave it again, if the enemy's pilots are detained. Where, however, the aircraft are detained, or where enemy civil airmen are in the country upon some other business, the question of the treatment of the pilots, navigators, engineers, or mechanics concerned is an open one. Practice in the matter of allowing enemy nationals to leave upon the outbreak of war has varied. Before the great war it was tending steadily in the direction of allowing free departure. In the great war, Great Britain allowed German subjects to leave up to 10 August, 1914²—nearly a week after the nominal commencement of hostilities. France permitted all foreigners to leave up to 3 August, and after that date if provided with a passport; from 1 September, no German who had not already gone was allowed to leave France.³ Germany allowed no "days of grace," and prohibited the departure of enemy subjects from the first.⁴ Japan

¹ Convention relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities, 1907. As regards the treatment of enemy merchant vessels in the various belligerents' ports upon the outbreak of war in 1914, see J. A. Hall, *Law of Naval Warfare*, 1921, pp. 29-35; and Fauchille-Bonfils, *Droit. Int.*, 1921, ii. § 1400 (3).

² Oppenheim, *Int. Law*, 1921, ii. § 100.

³ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1055 (3).

⁴ Garner, *Int. Law and the World War*, 1920, i. p. 78; Fauchille-Bonfils, *loc. cit.*

allowed even German reservists to return to Germany in Japanese ships.¹ The United States allowed no period of grace in the Proclamation which regulated the question of the treatment of enemy aliens, but, as that Proclamation was not issued until nearly two weeks after the American declaration of war, many German subjects were, in fact, allowed to leave freely at first and could do so under a permit after the issue of the Proclamation.²

The law in regard to detention.—The present international law upon the question is thus stated by Oppenheim :—³

“ It may safely be said that there is now a customary rule of International Law, according to which all such subjects of the enemy as are not real or potential members of his armed forces must be allowed a reasonable time for withdrawal. On the other hand, such enemy subjects as are active or reserve officers, or reservists, and the like, may be prevented from leaving and be detained as prisoners of war ; for the principle of self-preservation must justify belligerents in refusing to furnish each other with resources which increase their means of offence and defence.”

Civil pilots, navigators, engineers, and possibly mechanics employed in aircraft are likely to be enrolled in the reserve forces of their country, and in any case, even if they are not, their potential usefulness to the enemy in war would justify their being detained under the principle enunciated by Oppenheim. It must, however, be remembered that any course adopted by a belligerent is fairly certain to be copied by the enemy, and it is for his consideration whether, on the whole, it is not to his advantage to allow even highly skilled enemy airmen to depart as the price of a like concession for his own civil airmen in the enemy country. MM. Fauchille-Bonfils, while admitting that a State “ has an incontestable right to refuse to facilitate the recruitment of the enemy’s army,” and, therefore, to detain potential enemy soldiers on the outbreak of war, add that “ from the point of view of practical utility, such a measure is condemned.” “ To retain the subjects of the enemy State, who would take service in his forces, is to expose oneself to reciprocal treatment ; it is, moreover, to force upon oneself the necessity for a strict surveillance of the comings and goings of these men who, detained against their wishes, will be led by their patriotic feelings to adopt every means of injuring the country which has kept them.” ⁴

¹ Garner, *op. cit.*, p. 82 ; Fauchille-Bonfils, *loc. cit.*

² Garner, *op. cit.*, p. 84.

³ Oppenheim, *Int. Law*, 1921, ii. § 100.

⁴ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1053. The alternative to the “ strict surveillance ” which is referred to in the extract quoted is a system of internment,

Neutral aircraft and crews in belligerent jurisdiction.—

As regards neutral (civil) aircraft and their crews within belligerent jurisdiction upon the outbreak of war, the States whose peace-time air relations are governed by the Convention of 1919 are free, under the Article already quoted, to adopt such measures of prohibition or control of air entry as they may decide, whether they are belligerents or neutrals, and it is to be presumed that a belligerent State, at any rate, will suspend or modify the provisions of the Convention in so far as the free circulation of neutral aircraft within its jurisdiction is concerned. How far a special air navigation agreement will be affected by the fact that one of the parties becomes engaged in hostilities depends upon the terms of the agreement. In any case, a belligerent State has the right, called the right of Angary, to seize, use, or destroy, if necessary, for the purpose of offence or defence, neutral aircraft which are *temporarily* within its jurisdiction, but that right does not extend to the requisitioning of the services of the neutral crews of the aircraft.¹ The property within a belligerent's jurisdiction of neutral subjects *resident* in the country is subject to the same liability to requisition as that of the belligerent's own nationals,² and it is to be presumed that this rule would apply to neutral private aircraft as well as to other property, even though such aircraft possessed neutral nationality in virtue of its neutral ownership. The case is not, perhaps, very likely to arise, but it may easily happen that other property of a neutral air transport company, such as hangars, aerodrome offices, etc., is required in war time by the belligerent State in whose territory it is situated, and such property could be requisitioned as if it were the property of a company or individual of belligerent nationality. The neutral subjects employed in connection with the property referred to could not, however, be compelled to take service under the belligerent. Exactly what liability to requisition attaches to property in any given country depends upon the domestic legislation of the State concerned. In Great Britain such liability is defined, in regard to aircraft and aircraft materials, by the Air Force Act, Section 115 (which empowers His Majesty, by order stating that a case of

and this, with its great expense and the still more injurious diversion of man-power from directly warlike purposes to the rôle of guards, warders, and so on, cannot be held to have proved itself a success in 1914-18.

¹ See Oppenheim, *Int. Law*, 1921, ii. § 365; see also Fauchille-Bonfils, *Droit Int.*, ii. § 1490 (5), and pp. 463-4 of the present book.

² Oppenheim, *Int. Law*, 1920, i. § 321, and Fauchille-Bonfils, *Droit Int.*, ii. § 1490.

emergency exists, to authorise an officer of the rank of squadron-leader, or higher, to issue a "requisition of emergency" for the provision of (*inter alia*) aircraft of every description and stores of every description, subject to the payment of due compensation), and by the Air Navigation Act, 1920, Section 7 (which empowers a Secretary of State by order to provide for taking possession of "any aerodrome or landing ground, or any aircraft, machinery, plant, material, or things found therein or thereon"). The permanent legislation contained in the two Acts referred to may be supplemented by special legislation in the form of a Defence of the Realm Act and by regulations thereunder empowering the executive to take over or occupy any property required for national purposes. Practically all the requisitions of lands and buildings effected by the War Office, Admiralty, Ministry of Munitions, and Air Ministry in the great war were effected under powers conferred by regulations made under a special Defence of the Realm Act.

CHAPTER IV.

COMBATANT AIRCRAFT.

SECTION I. THE CONDITIONS OF COMBATANT STATUS.

Combatant status.—The determination of combatant status is a necessity of civilised warfare on land, on sea, or in the air. The distinction between the combatant and the non-combatant elements of a community is the essential condition precedent of the humanising of warfare. Without it, no part of a community could be spared the full rigours of war. If a certain measure of immunity is to be granted to that portion of the population which does not engage actively in hostilities, it is obviously important that the line between that portion and the active, fighting portion should be sharply drawn and loyally maintained.

It is, furthermore, necessary that, on the part of the combatant or fighting portion, there should be an honourable observance of the "rules of the game" of war. Even as between the fighters themselves war is not unbridled violence. It is waged on behalf of States who remain responsible, in the clash of arms, to their opponents as well as to neutrals, that the laws of war and of humanity are respected. Those who fight are the servants and agents of the organised communities whose champions in arms they are. They are subordinate and responsible to the Governments of the belligerent States. Save in one exceptional case which is peculiar to land warfare, that of the *levée en masse*, governmental authority in some shape or form—commission, enrolment, attestation, warrant, or enlistment—is necessary to establish the quality of combatant.

The signs of combatant character.—The combatants who are thus clothed with their State's authority must be recognisable as such. Unless it is made clear by unmistakable indications who are combatants and who are not, the differentiation which civilised warfare allows and enjoins becomes impossible. Hence, in land war soldiers must wear a uniform and "irregulars," if they are to be accorded the privileges of

combatants, must bear some fixed, recognisable emblem to indicate their character as fighting men and to separate them from the civilian population. It is true that a flag is used also by land forces. It is associated, indeed, with some of the great pageants of land warfare; one thinks of "the white Maid and the white horse and the flapping banner of God," of Vendôme's putting the young king of Spain to sleep on a bed of captured standards after the victory of Villaviciosa, and of the red battle flag and the "stars and bars" of Pickett's and Pettigrew's brigades rising and falling on the long slopes of Gettysburg; but it is the uniform and not the flag which is the essential mark of combatant *status* in land war. At sea the sign or emblem is the flag. Uniform is of minor importance and significance at sea. The mechanical or material element of the fighting organism—the armed and manned ship of war—so predominates over the human element that it is sufficient if the former bears the sign or emblem of combatant character. For aircraft, again, it is necessary to establish some special mark, and here, again, it is the machine which forces itself upon the attention to the exclusion of the human element therein. A flag, however, would not be a satisfactory emblem for a flying machine, and some other form of showing its combatant character is required. Practical considerations have brought it about that, for aircraft, marks on the sides and above and below the planes or wings have taken the place of the White Ensign or its foreign equivalents, but are no less necessary and significant.

A flag unnecessary for seaplanes.—The fact that aircraft do not carry a flag nearly led to a tragedy on one occasion. In April, 1917, flying-boat No. 8659, from Felixstowe, had to come down in the North Sea on account of petrol failure and the pilots hailed a trawler which was fishing there for assistance. The skipper replied, "I won't rescue any d——d Huns." The pilots explained that they were English. "If you're English," said the skipper, "give us a sight of the Union Jack." Flying-boats do not carry a flag, but the skipper could not be convinced of the nationality of the aircraft until one of the officers thought of throwing across his naval cap as evidence upon the point. The skipper examined it, was apparently satisfied, and rescued the pilots.¹ At the beginning of the war, indeed, "it was arranged that every machine [of the R.N.A.S.] should fly a Union Jack lashed to one of its struts, but this was not done."²

¹ P. I. X., *The Spider Web*, 1919, pp. 73-4.

² Raleigh, *The War in the Air*, i. 372.

The naval aeroplanes consequently had no nationality marks until after a few months of war the tricolour cockade was adopted.

The pre-war view as to marks.—The British land aeroplanes—those of the R.F.C.—were also without nationality marks at the beginning of the war. Attention had been drawn¹ to the importance of the marking of military aircraft with a distinctive and fixed design, but the official view had not favoured the idea. "It had been suggested before the war," says Sir Frederick Sykes, who commanded the military wing at the outbreak of war, "that they [marks] would not be necessary, but the reverse was found to be the case, as even with the distinctive marks which were adopted our machines were often fired at by British troops, and we should undoubtedly have lost very heavily if we had flown over our own lines with false marks, as was suggested, or none. . . ." ²

As regards the suggestion that false marks should be borne, the writer deals with this question in a later part of the present chapter. The important point for the present purpose is that it was the practical exigencies of actual warfare and not any legal considerations which led to the adoption of the system of national markings upon which international law does, in fact, insist.

The early mark in the British service.—The mark first adopted in the British service was the Union Jack. At Maubeuge, about the end of August, 1914, the R.F.C. hastily painted Union Jacks in the form of a shield on the under side of the lower plane of all the machines.³ It proved to be an unsatisfactory mark; "pilot and passengers," said Major G. H. Raleigh, No. 4 Squadron, R.F.C., in a report of 26 October, 1914, "had both been wounded by our infantry fire when at a height of about a thousand feet with the large Union Jack plainly visible." ⁴ Whether it was, in fact, so plain from the ground as is here stated may, however, be doubted. An infantry officer in a letter of a few weeks earlier states that while the German aeroplanes have the black Maltese cross on their wings and the French the tricolour rosette, the British have "something like a Union Jack." ⁵ This points to some lack of distinctiveness in the design. The lamentable

¹ E.g. by M. Fauchille in France and by the present writer in England.

² Sykes, *Aviation in Peace and War*, 1922, p. 61.

³ Raleigh, *The War in the Air*, i. 295. The Union Jack was at the tip of the wing. See J. T. B. McCudden, *Five Years in the Royal Flying Corps*, p. 35.

⁴ Raleigh, *op. cit.*, i. 348.

⁵ Letter quoted in *The Aeroplane*, 7 October, 1914.

accident in which a British pilot and his observer were shot down and killed by our own troops (26 October, 1914),¹ was the culminating reason for a change of marks. Many less serious incidents of the kind had already occurred. Sir John French's dispatch of 7 September, 1914, stated that our airmen had been "fired at constantly both by friend and foe." An R.F.C. officer wrote on 4 September, 1914: "We have been shot at and shelled by friend and enemy every time we have been up, and machines have scarcely ever come down without bullet holes all over the planes."² Mr. Maurice Baring, who was then at R.F.C. headquarters, records that in September, 1914, an R.F.C. machine which was practising signalling and dropping lights, flying low for this purpose, was "thought to be behaving in a 'suspicious manner' and was fired at by our troops and before the men could be stopped firing it was brought down amid the cheers of the men. When the machine crashed they saw that the pilot was an Englishman and that he was dead."³

The tricolour cockade.—It was in order to prevent mistakes of this kind that in November, 1914, the Union Jack was discarded in favour of the French cockade, but with colours reversed. The Union Jack appears, however, still to have been left, along with the new mark, on at least some of the British machines; for in the diary of a "Non-combatant at the Front" which was reproduced in *The Times*,⁴ it is recorded under the date of 22 November, 1914, that the Allies' machines were marked with large circles, red, white, and blue, concentric, "and the Union Jack on the tips of the wings." Possibly there were some cases of "survival" of the old marking.

Errors in identification of marks.—The new marking did not wholly prevent the recurrence of errors of identification; and these errors occurred also in the case of French machines, which had been marked with the cockade practically from the first.⁵ There were many instances in which French aircraft

¹ See *The Aeroplane*, 13 January, 1915.

² Letter quoted in *The Times*, 29 September, 1914.

³ M. Baring, *R.F.C.H.Q.*, 1920, p. 49.

⁴ See *The Times*, 14 December, 1914.

⁵ Renaud de la Fregolière says in *A Tiro d'Ailes*, 1916, p. 68, that "at the beginning of the war no flag [sic] as yet distinguished the nationality of the machines, either from above or on the sides." On the other hand, Mortane states in *Les Vols émouvants de la Guerre*, 1917, p. 220, that as early as August, 1914, the French aeroplanes had the tricolor *cocarde* painted upon them; and in *La Guerre aérienne*, 8 August, 1918, there will be seen a photograph of a French pilot, Lieut. Grandry, who was killed on 21 August, 1914, in a monoplane bearing the *cocarde* under the wing.

were fired upon by the French troops.¹ "Les Français tirent souvent sur nous," writes Brindejonc des Moulinais in his diary on 2 February, 1915. "Aujourd'hui encore le canon et le fusil ont rivalisé."² The most unfortunate case of the kind was that in which the French dirigible "Dupuy-de-Lôme" was shot down by the French territorials at Rheims, in mistake for a German airship, at the beginning of the war.³ The French airman-senator, Reymond, speaks in his diary, under date of 1 September, 1914, of being fired upon by French soldiers in a wood. "Let them fire upon the French if they choose," he says, "I see no objection to that, for they cannot reach us. But I do see objection to their firing on the Germans, who thus learn that the wood is in French occupation."⁴ Navarre records that he was attacked in the air by a French Caudron in mistake,⁵ and the same experience befell Pégoud on 16 June, 1915, when he relates in his diary: "Suis attaqué et mitraillé par Caudron deux moteurs, me prenant pour Aviatik. Fais un virage pour montrer mes cocardes. Arrêt immédiat du tir."⁶ "Zut!" writes another French airman, "j'ai tiré aujourd'hui sur un avion ami."⁷ Indeed, all through the war these mistakes continued.⁸ They were due for the most part to the practice of identifying machines on first sight rather by their shape or silhouette than by their nationality marks.⁹ The Fokker was mistaken for the Morane-Saulnier, the Otto for the Voisin, the Albatross for the Curtiss.¹⁰ An American airman says: "The models of some of the French and German aeroplanes are so very much alike that they cannot be distinguished until they are within range. The tricolour cockade and the black iron cross painted on the top and bottom of each wing

¹ See Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 20-1.

² Quoted *La Guerre aérienne*, 8 March, 1917, p. 267.

³ Mortane, *op. cit.*, ii. 298; C. Lafon, *Les Armées aériennes modernes*, 1916, p. 259; G. Huisman, *Dans les Coulisses de l'Aviation*, p. 18.

⁴ *La Guerre aérienne*, 20 December, 1917, p. 86.

⁵ Navarre, *Mes Aventures guerrières . . . et autres*, in *La Vie aérienne*, 25 September, 1919, p. 620.

⁶ P. Bonnefon, *Le Premier 'As' Pégoud*, 1918, p. 93.

⁷ B. Lafont, *Au Ciel de Verdun*, p. 158.

⁸ See Rickenbacker, *Fighting the Flying Circus*, 1919, p. 20; M. Baring, *R.F.C.H.Q.*, 1920, p. 223, who records under date of 10 May, 1917: "The Spads have been fighting the Sopwiths in the air; this has led to an acrimonious correspondence." See also C. J. Biddle, *The Way of the Eagle*, 1919, pp. 188, 192, 233.

⁹ See Noble, *With a Bristol Fighter Squadron*, 1920, p. 24; A. C. Reid, *Planes and Personalities*, 1920, p. 143; B. A. Molter, *Knights of the Air*, p. 107.

¹⁰ See Mortane, *Les Vols émouvants de la Guerre*, 1917, p. 212; *La Guerre aérienne*, 14 December, 1916, p. 80; L. W. B. Rees, *Fighting in the Air*, 1916, pp. 13-14; Baring, *R.F.C.H.Q.*, p. 145 ("The Morane bullet is indistinguishable from the Fokker in the Air").

serve to identify the flyers of the two belligerents, but these colours cannot be seen very far. You consequently have little warning as to whether the approaching planes are friends or foes.”¹ Usually, however, the mistake was rectified when the machine attacked showed its markings. Lieut. Walter Noble says: “On my second offensive patrol two scouts sat on my tail, creeping nearer every moment. An expert would have known them at once as Belgian Nieuports. I didn’t, and, becoming suspicious, decided to take no risks and fired a burst between them. One of them immediately lifted a wing and showed her markings.”² But even the displaying of the nationality marks did not always suffice to remove the error. Guynemer has himself told the story of his bringing down an English aeroplane. It happened in this way. A young English pilot, who had just succeeded in bringing down a German machine, saw Guynemer suddenly emerging from a cloud and, excited by his recent victory, opened fire upon him. “I turned and turned in all directions,” says Guynemer, “to show him my tricolour *cocardes*. He persisted. What was I to do? . . . I had to immobilise him.” With this object, he aimed at the Englishman’s engine and forced him down in the French lines. Landing beside the English pilot, Guynemer found that he had wounded his unwanted victim in the leg, and, after declaring his identity, was overwhelmed with apologies—“so many,” says Guynemer, “that I ended by asking myself whether it could be *I* who had had the bullet in my leg! Such errors are possible at a certain distance,” he adds, “and many cases of the kind, more or less tragic, are on record.”³

On one occasion, it is stated, a British flight commander, newly arrived on the western front from England, meeting an unusual type of machine over Houthulst Forest, opened fire on the supposed enemy, who were really French “Spads.” “The ‘Spads’ escaped unscathed, but the next morning the British squadron commander received a short but somewhat biting note from the O.C. ‘Storks,’ protesting that ‘Yesterday your patrol did fire on my Spads, but it did not matter a bit!’”⁴

¹ C. D. Winslow, *With the French Flying Corps*, p. 154.

² Noble, *With a Bristol Fighter Squadron*, p. 178.

³ Quoted in *La Guerre aérienne*, 4 July, 1918, p. 540; see also Baring, *R.F.C.H.Q.*, p. 238, who says: “Commandant Marmies came in the afternoon to give a *Croix de Guerre* to a pilot who had attacked Guynemer in the air. Guynemer had instantly shot back before he saw it wasn’t a German [this is not quite correct] and wounded the observer in the leg.”

⁴ Major R. S. Wortley, “Recollections of the R.F.C. during the Great War,” in the *Army Quarterly*, vol. vi. (1923), p. 359.

The same kind of mistake occurred also on the German side. At Mutno in December, 1914, the Germans shot down one of their own aeroplanes, which they took for a Russian one, and killed the occupants.¹ On 5 June, 1918, a flight of six Albatross scouts fought by mistake another German flight, evidently mistaking them for a British patrol, and brought some of the second flight down.² In the Russian service, too, similar occurrences were not unknown. A Russian observation balloon was destroyed in June, 1917, by a French pilot (Lieut. Lachmann) serving with the Russian army, in mistake for a German balloon.³ A case reported by Mr. Warner Allen, Press representative with the French forces, of the destruction of an Allied observation balloon early in July, 1916, by a German aircraft bearing the French marks and using explosive bullets,⁴ was probably, also, one of attack by friend upon friend in the confusion of battle; for by "explosive" bullets "incendiary" bullets are almost certainly meant, and at that time the German air forces had no incendiaries.

Reasons for errors in identification.—It is possible that some of the mistakes in identification were due to the smallness of the nationality marks painted on the machines. C. B. Nordhoff speaks of encountering in the air a darkly camouflaged German two-seater, which seemed at first to have no insignia but later was seen to have two tiny black crosses set in circles of orange: a case of clearly inadequate marking.⁵ It is true, also, that the black cross which was used on German aircraft up to June, 1918, lent itself to some extent to confusion with the Allied disc on account of the curved arms of the cross, which was of pronounced Maltese form. This was recognised by the German authorities, who in that month altered the shape of the arms of the cross, making them straight instead of round.⁶ Even before this change the mark should have been easily identifiable except at long ranges if the instructions in regard to its size had been observed. In the official instructions

¹ C. Lafon, *Les Armées aériennes modernes*, 1916, p. 259; *Flight*, 1 January, 1915.

² Hamilton Fyfe in *Daily Mail*, 12 June, 1918.

³ See Lachmann's own account of the incident in *La Guerre aérienne*, 6 February, 1919, pp. 83-4.

⁴ See *Flight*, 20 July, 1916; *The Aeroplane*, 19 July, 1916.

⁵ C. B. Nordhoff, *The Fledgling*, 1919, p. 80; see also Noble, *With a Bristol Fighter Squadron*, 1920, p. 18.

⁶ See *Flight*, 4 July, 1918; *The Aeroplane*, 3 July, 1918. Photographs of German aircraft bearing the later type of mark—a black cross with straight arms—may be seen in *The Aeroplane* of 14 August and 16 October, 1918. Already in 1916, Major L. W. B. Rees (*Fighting in the Air*, p. 14) had drawn attention to the similarity between the rounded cross of the German mark and the Allies' disc.

published very early in the war in the German field newspaper, *Parole*, it is stated that the black cross on the top and bottom of the planes and on each side of the rudder, is "the full width of the surface."¹

It is possible that the practice of camouflaging the machines in various colours, and of painting upon them squadron or private insignia (see later in this chapter), may have contributed to the causes of error. On the whole, however, the nationality marks proved to be a most valuable aid to identification. Again and again one finds the fighting airmen stating in their memoirs or diaries that they have been saved from attacking a friend or have been put on guard against a foe by seeing the distinguishing marks on the wings of the machines.² Oberleutnant Sieverts, a German airman-observer, states that the Allied cockades were distinguishable at 1000 metres through a glass;³ the German airmen apparently relied upon their glasses for identifying the marks on approaching planes.⁴ So far as air combat was concerned, fighting very rarely appears to have been begun at a range at which, given reasonably large markings, it should not have been quite practicable to distinguish the other machine's marks with the naked eye. The "born" pilot appears, indeed, to have developed a sort of instinct for knowing enemy machines at long distances. "You learn to sense their presence and to know their nationality long before you can make out the crosses on the planes."⁵

The marks used in the great war.—The recognition of friend and foe was facilitated in the great war by the fact that the Allied machines all bore the cockade or disc and the machines of the Germans and their allies the black Maltese cross. At first, as already stated, the British machines bore no marks, and then for a time the Union Jack. In November, 1914, they adopted the cockade, with blue in the outer ring and red in the centre; the French cockade had the outer ring red and blue in the centre.⁶ Belgian aircraft bore a cockade of black, yellow, and red, with black in the centre, and Italian machines one with green outside, white in the middle, and red

¹ See *The Aeroplane*, 30 September, 1914, giving extract from the *Parole*.

² See, for instance, Friedrich Frei, *Unser Fliegerheld Immelmann*, p. 31; Tutschek, *Stürme und Luftsiege*, 1918, p. 171; Immelmann, *Meine Kampfslüge*, 1917, pp. 62, 103, 107; Buddecke, *El Schahin*, 1918, pp. 46, 56; Hans Henkelburg, *Als Kampfslieger am Suez-Kanal*, 1917, pp. 90, 98, 105.

³ *Das Fliegerbuch* (Ullstein), 1918, p. 82.

⁴ See, e.g., Immelmann, *Meine Kampfslüge*, p. 103.

⁵ W. A. Bishop, *Winged Warfare*, p. 44.

⁶ G. Crouvezier, *L'Aviation pendant la Guerre*, 1917, p. 199.

in the centre.¹ When America came into the war, she adopted the cockade with red outside, then blue, and white in the centre.² It had been intended that the American nationality mark should be a five-pointed star, and a photograph showing such a star being actually painted upon the wing of an American aeroplane may be seen in the *Daily Mail* of 8 August, 1917. Before the American air squadrons actually came into service, however, the Allied cockade was adopted instead of the star, but the idea that the mark was a star persisted for some time.

The American mark.—"One of the greatest difficulties we had was in teaching the doughboy to recognise the American insignia. Our publications were responsible for this, for every magazine published in the United States pictured the American airplane with a big star painted on its wings, while the insignia actually adopted was a *cocarde*—three circles of red, white, and blue, within one another, the centre circle being white, the British centre circle being red, and the French centre circle being blue. As a matter of fact, the star in the air, at a reasonably long distance, looks exactly like the German Maltese cross. In fact, a French airman once remarked that if the American had gone into combat with that much-advertised star and the Germans failed to get him, a friendly airman, misjudging the star for a cross, would have given a real battle."³

It was almost certainly because of mistakes of identification that the American machines were sometimes fired upon by their own troops. One need not take too seriously the statement which one American flyer, Elmer Haslett, makes, that the American airmen were in some cases deliberately fired at by American soldiers, one of whom gave as his reason that: "Them American planes ain't got no business being back this far from the lines," and that they required "a little backbone put in 'em"—by American volleys!⁴

The American *flag* does not appear to have been at any time painted on the American machines, either those of the

¹ The Roumanian machines appear to have borne the French mark: see *The Aeroplane*, 6 September, 1916.

² Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 112; Rickenbacker, *Fighting the Flying Circus*, 1919, pp. 32, 36.

³ Elmer Haslett, *Luck on the Wing*, p. 102. Major C. J. Biddle (*The Way of the Eagle*, 1919, p. 233) also records that the American "doughboys" fired upon their own aircraft in the belief that the disc was an enemy mark and that the true American emblem was a star. Since the war the United States air services have adopted as a mark a white five-pointed star on a background of a blue circle, with a red disc in the centre of the star.

⁴ Haslett, *op. cit.*, p. 105.

Lafayette Squadron or those of the U.S.A. Air Service; and Boelcke was almost certainly mistaken when he recorded, in a letter of 4 July, 1916: "There are six Americans in the air. I have seen quite clearly the American flag on their fuselage."¹

Marks on observation balloons.—The nationality marks were painted, it should be noted, not only upon the wings and fuselages (or rudders) of free aircraft (aeroplanes, seaplanes, flying-boats, dirigibles), but also on the envelopes of captive balloons. Pictures of these balloons (called *Drachen* by the Germans, and *saucisses* by the French) may be seen in various war publications, with the marks plainly visible;² and references to the marking of observation balloons may also be found in some of the war memoirs. Thus, Lieut. Ambrogi says, speaking of an attack upon a *Drache*: "I take the black cross within my sight and I have no eye for anything but my aim."³ "Near me," says Oberleutnant Buddecke, "there stood a balloon decorated with cockades."⁴ Even the *cars* or baskets of captive balloons appear in some cases to have been marked. The Dunkirk correspondent of the *Petit Journal* states that the car of a captive German kite-balloon which broke loose and came down at Dunkirk was "painted with the inevitable iron cross."⁵ The incident, already referred to, in which an airman in the Russian service shot down a friendly observation balloon, indicates the need for marks even upon such fixed aircraft. Incidents of the kind would probably have been frequent if balloons had borne no marks.

The use of false marks.—If one of the "morals" of the great war was the demonstration of the need for nationality marks upon aircraft, another and not less important one was the recognition by the belligerents of the principle that the use of false or enemy marks is forbidden. The inadmissibility of the use of such marks was established, first, by the accusations which the belligerents made against one another of resorting to the practice, secondly, by their indignant denials of any complaints that they had done so themselves. There is

¹ *Boelckes Feldberichte*, pp. 81-2. When, however, the United States declared war, an American flag on a staff erected above the fuselage of a biplane was carried over the French lines by the American airman, E. F. Hinckle, of the Lafayette Squadron. See photo in *Flight*, 5 July, 1917.

² See, e.g., Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 12; *La Guerre aérienne*, 14 March, 1918, p. 290; Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 253.

³ Quoted *La Vie aérienne*, 27 March, 1919, p. 204.

⁴ Buddecke, *El Schahin*, 1918, p. 94.

⁵ *Flight*, 9 March, 1916.

nothing in any of the official pronouncements to show that the prohibition which they imply is subject to any qualification, as, for instance, that it was a prohibition only of the use of the enemy marks in action or actual attack and that, in accordance with the maritime rule, the display of false "colours" before the first shot was fired was a legitimate ruse. Such a view is stated by an American officer who served in the French aviation to have been held in that service: "The air service," he says, "has always held to the naval law, to use disguises if desirable when cruising around, but never to go into action under false colours."¹ This statement finds no corroboration in the writings of other airmen and experts. Indeed, it is difficult to see how the maritime practice could have been adopted in the air: to alter the nationality mark of an aircraft, painted as it is upon the top and bottom surfaces of the planes, would have been an impossible performance in flight.

Complaints in regard to false marks.—Accusations of the use of false marks by enemy aircraft were common from the beginning of the war. The French accused the Germans of resorting to the practice.² The Germans alleged that the French aeroplanes which bombed Stuttgart on 22 September, 1915, bore German marks.³ The French instantly repudiated the charge.⁴ The Italians accused the Austrians of sending a dirigible with an Italian flag and bearing an Italian name (Ferra) to bomb Marecchi near Rimini at the end of March, 1915.⁵ An Austrian official report of 8 June, 1917, charged the Italian airmen with using falsely marked aircraft to drop bombs behind the front. Italy denied the charge and issued a *communiqué* in which it was stated (11 July, 1917):—

"An enemy *communiqué* announces that an Italian aeroplane has carried out bombardments masquerading under Austrian marks. The Italian Army has never resorted to such devices, which have been employed only by the enemy. The Austrian allegation is entirely

¹ Lieut. B. A. Molter, *The Knights of the Air*, 1918, p. 48. A letter of 6 November, 1914, from an artillery officer, quoted in *The Aeroplane*, 25 November, 1914, implies, incorrectly, that the use of false colours at sea is absolutely illegitimate: "I heard yesterday that the Germans are putting our mark on some of their machines. It is a horrid, low trick, if it's true, as it is equivalent to a warship sailing under false colours." His conclusion is sound, if his premises are not. For the use of the enemy's flag at sea, see J. A. Hall, *Law of Naval Warfare*, 1921, p. 85.

² See Lacroix, *Le Domaine aérien et la Guerre*, p. 200; Mérignhac et Lémonon, *Le Droit des Gens et la Guerre de 1914-18*, 1921, i. 649; Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 525.

³ German official *communiqué*, 22 September, 1915.

⁴ French official *communiqué*, 23 September, 1915.

⁵ Italian official *communiqué*, 1 April, 1915.

without foundation. If anything of the kind has happened, it can only be due to an Austrian aviator's bombarding his own positions in mistake for the Italian positions. This kind of mistake is frequently made by the Austrian artillery."¹

Germany and Russia made similar charges against one another's airmen.² Unofficial reports of the misuse of nationality markings were also common. In one case a French airman reported that he had encountered a German machine with tricolour cockades on top of the upper planes and black crosses underneath the lower ones.³ Cases of German machines being found to have Allied marks when brought down are also stated to have occurred.⁴ It is necessary to take all statements of the kind with a certain amount of caution. A few isolated cases no doubt occurred, but many were probably fictitious and the product of mistake or propaganda.⁵

Such complaints exaggerated.—An official statement issued in Paris early in the war, in regard to the measures contemplated to prevent German air raids upon Paris, referred to the difficulty of distinguishing between French and German aircraft and the resort of the latter to the use of French markings. Commenting on this statement, MM. Mortane and Daçay remark that the reference to false markings is "exaggerated, since our enemies know that at the height at which they fly any attempt to use fraudulent *cocardes* would be entirely useless."⁶ So, again, speaking of a case in which it was suspected that a French aeroplane was brought down by a German one bearing the French marks, M. Mortane says:—

"We do not think that the hypothesis of a French machine with a German crew need be considered. There has been too much of this kind of accusation, and it is our duty to state its futility, not because the Boches are incapable of such an ignominy, but because such proceedings would be useless to them and cause them very real danger. They would run the risk of being shot down by their own men."⁷

¹ *Diario della Guerra d'Italia*, iii. 75-6.

² See *The Aeroplane*, 16 June, 1915; Russian official report, 17 April, 1916.

³ Capt. Doumer, on 2 December, 1916, in *La Guerre aérienne*, 14 June, 1917, p. 486.

⁴ *New England Aviators*, 1919, i. 16; "Flight," *The Flying Yankee*, p. 148; *Petit Parisien*, quoted in *Daily Mail*, 5 June, 1918, and in *Flight*, 13 June, 1918.

⁵ In a paper on "The Work of the R.A.F. with the B.E.F. in 1918," in the *Journal of the Royal United Service Institution*, February-November, 1922, p. 345, Squadron-Leader B. E. Sutton says: "If, as sometimes happened, our machines fired at French or Belgian machines, the widespread belief that Germans were flying under false colours was strengthened. An attempt to prove this untrue (as indeed it was) gave fresh grounds for the belief, and led to troops shooting at our own machines even up to July, 1918."

⁶ *La Guerre aérienne*, 24 January, 1918, p. 184.

⁷ *Ibid.*, 14 June, 1917, p. 493.

In some cases the apparent misuse of nationality markings was really a case of misidentification by the pilot or observer reporting it. An Italian official *communiqué* of 14 September, 1915, stated that that morning an Austrian aeroplane "bearing our national colours" dropped bombs on Vicenza. The *Diario della Guerra d'Italia*¹ states that the colours referred to were probably Hungarian, "which are identical with ours but arranged horizontally instead of vertically." Another official report issued at Rome, 11 November, 1915, stated that the enemy was continuing to resort to perfidious methods (*mezzi sleali*) of war, and that a few days ago an Austrian aeroplane bearing the Italian colours dropped a bomb near Plava. A note in the *Diario*² again draws attention to the similarity of the Italian and Hungarian colours, as a probable explanation of the incident.

Use of captured enemy machines.—Cases also probably occurred in which machines were used after capture before the enemy marks had been removed or painted over. Undoubtedly, some use was made of captured machines. The Turkish *communiqués* refer repeatedly to the intention to take Allied aircraft which had been brought down into Turkish service.³ To do so would be perfectly legitimate, provided the original marks are obliterated and the captor's marks are placed on the machine. A photograph of a French Nieuport which the Germans had captured, upon which they had painted the black cross, and which had been re-captured by the French, may be seen in a war publication.⁴ A British pilot has recorded a case in which a German machine, brought down undamaged in the British lines, was flown by the pilot who captured it with the black crosses painted over.⁵ Brindejonc des Moulinais speaks more than once in his diary of the use of captured German

¹ *Diario*, i. 366.

² *Ibid.*, i. 526. The report in the Italian Press in June, 1915 (see *Flight*, 11 June, 1915, and the Italian Press Bureau statement quoted in Middleton, *The Great War in the Air*, ii. 91), that an Austrian aeroplane flying the Italian flag attacked Bari in that month, was almost certainly based on some similar misconception; it is extremely improbable that an aeroplane would have carried a flag or that, if it had, the flag could have been identified at the height at which it flew.

³ "An enemy aircraft which we have brought down near Birel-Sabe will be put into use by us after some repair" (Turkish *communiqué* of 24 December, 1915). "The aeroplane [brought down near Akbaneh] can be easily repaired" (7 January, 1916). "The machine, almost intact and utilisable after a little repair, remains in our possession" (17 February, 1917). "The captured machine will be utilised by us" (9 May, 1917). "The machine will be ready for service after a few repairs" (27 March, 1918).

⁴ *La Guerre aérienne*, 5 September, 1918, p. 681.

⁵ See *Daily Mail*, 19 April, 1918.

aircraft.¹ No objection can be raised to the conversion of either a non-military aircraft, or of a military aircraft captured from the enemy, into a military aircraft of the belligerent converting it; and the fact that, in the latter case, it may be mistaken, because of its type, for an aircraft of the belligerent to whom it originally belonged, does not render its use by the captor illegitimate, provided always he has altered the marks. The Germans were guilty of no offence when, on 22 May, 1915, they sent a captured French machine, but correctly marked with the black cross, to bomb Paris; the fact that, because of its form, it was taken at first for a French aircraft, was no sufficient ground for complaint against their action.²

Very different, however, and gravely reprehensible, was their action—if the allegation was true—in using a captured Maurice Farman, with the tricolour cockade still upon it, to drop bombs on the French lines near Péronne on 27 November, 1914.³ The British flying officer who wrote under the name of "Night-Hawk" has recorded another instance of the kind. He states that at one stage of the war a German pilot crossed our lines regularly, for a week or more, in a captured British machine, to bomb Bethune. Two British pilots were sent up to stop him, and had orders to shoot down at sight any F.E. machine which they saw on the canal between La Bassée and Bethune. They did not find the German machine, but did find one another, and only the fact that neither quite succeeded in "getting on the tail" of the other saved them from figuring in a regrettable incident.⁴ A more remarkable tale, and one which, if true, amounts to an admission of a serious war crime, rendering those who took part in the incident liable in the event of capture to be punished by a military court, is related by another flying-officer. He states that a German aeroplane had landed, intact, in the British lines, and two British flying officers immediately mounted it, flew it to a certain switch station

¹ E.g. under dates of 3 April, 1915, and 1 August, 1916 (*La Guerre aérienne*, 8 March, 1917, p. 268, and 7 June, 1917, p. 479).

² See Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 329. It is hardly necessary to say that the "nationality" or type of the engine has no bearing upon the combatant status of an aircraft. It is perfectly legitimate to instal a captured engine, without modification, in a military aircraft. Wolff, the German "Ace," is stated to have been flying a new Fokker in which he had installed a Le Rhone engine from a captured British machine, when he was killed in an air combat (Major R. S. Wortley, "Recollections of the R.F.C. during the Great War," in the *Army Quarterly*, vol. vi. (1923), p. 364).

³ Mortane et Daçay, *Histoire de l'Aviation allemande*, in *La Guerre aérienne*, 28 February, 1918, p. 264.

⁴ "Night-Hawk," M.C., *Rovers of the Night Sky*, 1919, pp. 128-9.

some sixty miles behind the German lines, over which they were allowed to pass unmolested because of their machine's marks, and on reaching their destination, landed, brained the German occupant of the station with a wrench, and pulled the switch-lever so that two trains were brought into collision. Their mission accomplished, they returned to their aerodrome in safety.¹ If the story is hardly credible, it is at any rate useful as an illustration of an altogether illegitimate act of war. The not infrequent record² of the mounting, immediately after capture, of German machines by the Allied pilots who had brought them down, and the bringing of them in this manner into the captors' aerodrome, may be hardly better founded, but cannot, at all events, be regarded as disclosing so deliberate a disregard for the rules of honourable warfare. There was, for instance, little fault to be found with the action of the American airmen in a case which Capt. E. V. Rickenbacker records, although it was not, perhaps, altogether discreet.

Capt. Rickenbacker tells how a German "Hanover" aeroplane was captured by his squadron, No. 94 (American) Pursuit Squadron, on 2 October, 1918, and was repaired in a few days and made fit to fly. "We left the Hun Maltese cross and all their markings exactly as we found them, and, after telephoning to the various American aerodromes in our vicinity that they must not practise target shooting at a certain Hanover aeroplane that they might encounter while wandering over our part of the country, we took the machine up to see how it flew. . . . Many of us took her up for a short flip and landed again without accident. Then it became a popular custom to let some pilot get aloft in her and as he began to clear the ground half a dozen of us in Spads would rise after him and practise piquing down as if in an attack."³ These practice flights appear to have been confined to the vicinity of No. 94 Squadron's aerodrome and as the object of them was merely experiment and training, not the deception of the enemy, the retention of the German marks could hardly be regarded in this case as a serious "war crime." Since, however, it was always

¹ Lieut. R. H. Reece, *Night Bombing with the Bedouins*, 1919, pp. 21-5.

² See, e.g., Mortane, *Les Vols étonnants de la Guerre*, 1917, p. 66; Stuart Walcott, *Above the French Lines*, 1918, p. 75; Middleton, *The Great War in the Air*, i. 87. In *The Aeroplane*, 28 February, 1917, there appears an account, apparently derived from French official sources, of the flying back to the Allied lines by a British pilot of a German machine which he had brought down in enemy territory. All such stories are to be accepted with caution.

³ Rickenbacker, *Fighting the Flying Circus*, 1919, pp. 320-1.

possible that German aircraft might have appeared in the locality where the practice flights were being carried out, there was obviously some danger of the enemy's being misled by the "false marks" and of complaint upon that score. As it was, the only persons deceived were some French anti-aircraft gunners who fired upon the Hanover when, by mistake, it ventured too near their aerodrome.¹

Formation and other marks.—The marks hitherto referred to in this chapter and of which alone international law takes cognisance in prescribing the rules governing combatant status, are those adopted by a State for its military aircraft as a whole. There are also other marks, of three distinct kinds, which are in practice borne by aircraft. These are, first, the marks showing the formation—group, wing, or squadron—to which a machine belongs; secondly, the individual or private marks which machines often bear; thirdly, camouflage markings of various kinds. International law is concerned with these three categories of markings only to the extent of insisting that they shall not be of such a nature as to obscure the national marks of the aircraft bearing them or to imitate the enemy's national marks. So long as they do not transgress this rule, they may legitimately be used, in an almost bewildering variety of devices. Although they are not the marks to which the rules of warfare refer, it may be useful to place on record some particulars of their use in the great war.

Group and squadron marks.—The use of special insignia for the various *groupes* and *escadrilles* was general in the French service, and a similar practice obtained in the German air force. Some of these marks were as well known as the tri-colour cockade or the black cross. The red marks on "nose" and wings of the German "Tangos," the flying stork of the French "Cigognes," the Red Indian's head of the Lafayette Squadron, were famous everywhere. The first of these, a squadron of the Richthofen "circus," was called the "Tango" squadron, either on account of "the veritable 'tango' dance movements of their formation flying,"² or else because of the "bague de couleur orange" which encircled the fuselages between the black crosses and the tail planes.³ There were, it should be explained, two squadrons in the Richthofen circus,

¹ Rickenbacker, *op. cit.*, p. 327.

² E. C. Parsons, *L'Histoire de l'Escadrille La Fayette*, in *La Guerre aérienne*, 5 December, 1918, p. 910.

³ Marcel Viallet in *La Guerre aérienne*, 18 October, 1917, p. 781.

one with red noses,¹ the other with "the belly of each fuselage painted a bright yellow."²

Nature of the squadron marks.—The squadron markings were extraordinarily varied. They were of all kinds, from really artistic symbols or emblems to rather crudely blatant and sometimes boastful story-pictures.³ Of the latter kind were the device of the French Escadrille 81, which showed a greyhound pursuing a rabbit marked with an iron cross,⁴ and that of a German squadron which represented the "lion of Bavaria" chasing a Gallic cock.⁵ The emblems of the two most famous squadrons in which the American airmen fought, the Lafayette and the 94th Pursuit Squadron, were a Red Indian's head, with feathers, and a hat within a circle respectively. The 94th was usually known as the "Hat in the Ring" Squadron throughout the United States service.⁶ Sometimes a French and a German squadron chanced to hit upon very similar emblems. The famous mark of the "groupe des Cigognes," which comprised Escadrilles No. 3—*par excellence* the "Escadrille des Cigognes"—No. 26, No. 73, and No. 103, and to which Guynemer, Fonck, Dorme, Heurteaux, Auger, Deullin, de la Tour, Garros, and Harcourt belonged,⁷ was almost exactly the same as that borne by a German squadron.⁸ Whether chance or conscious imitation was the reason for this similarity it could not legitimately be made a ground for complaint against either side. The important mark, which it is an offence to adopt, is the enemy's nationality mark upon his service aircraft; there is no sacredness about the squadron or other marks.

Pilots' individual marks.—Distinct from the group or squadron marks were the private or individual marks which

¹ The red colouring of the Richthofen Circus machines is mentioned by Richt-hofen himself (*Der rote Kampfflieger*, p. 125) and by Tutschek (*Stürme und Luft-siege*, pp. 97, 102).

² E. V. Rickenbacker, *Fighting the Flying Circus*, p. 91.

³ Reproductions in colour of a great number of the insignia of the French *groupes* and *escadrilles* may be seen in *L'Aéronautique pendant la Guerre mondiale*, Brunoff, Paris, 1919, pp. 37-61, and in *The Lafayette Flying Corps*, ii. pp. 40, 76, 124, 160, 196, 232, 280, 312. Some black-and-white reproductions may be seen in Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 385-408.

⁴ See the picture in *La Guerre aérienne*, 14 March, 1918, p. 284.

⁵ *Ibid.*, 3 October, 1918, p. 758.

⁶ Rickenbacker, *Fighting the Flying Circus*, p. 20.

⁷ Fonck, *Mes Combats*, 1920, pp. 83-4; Chavagnes, *De Guynemer à Fonck*, p. 80; C. G. Biddle, *The Way of the Eagle*, 1919, p. 41. Escadrille No. 3 was cited to the French army on 28 November, 1918, as having officially destroyed 178 enemy machines and damaged 160 others (see *La Vie aérienne*, 6 February, 1919, p. 86).

⁸ See photo of the German machine in *La Guerre aérienne*, 25 April, 1918, p. 388.

aircraft often bore. "Chaque aviateur a marqué son appareil d'un signe particulier: fétichisme ou coquetterie," wrote a French pilot in 1916.¹ Another French pilot, afterwards missing, who has left a valuable record of his experiences, wrote:—

"Every pilot has his personal emblem, adorning more or less discreetly his machine—cypher or fetish—which, despite the regulations, he substitutes for the simple number which alone should distinguish his aircraft. Navarre had a tricoloured Nieuport, P—— a black spad, M—— a machine of blood red, and the value which we set upon these special marks, the companions of our flights and fights, shows that the men of the air are not less superstitious than the men of the sea."²

An American pilot who served in the British Air Force wrote:—

"Every airman generally has some distinguishing mark on his plane, always a number, and more often than not some design or initial painted on the fuselage next to the insignia of the country to which he belongs."³

Nature of the private marks.—The private markings were of all kinds and descriptions. Major Bishop tells us that his machine was fitted with a round nose, painted blue, on the head of the air screw, and was known as "Blue Nose"; it was a sign, he says, that he was an "Ace."⁴ Capt. Albert Ball's machine had a red nose, and the object, he said, was "to avoid there being any doubt when he brought down an enemy machine."⁵ Lieut. D. E. Putnam, who succeeded Lufbery as the American "Ace of Aces," and was himself killed in September, 1918, flew a brightly painted red machine which was commonly known as "Putnam's Red Devil."⁶ Often the private mark was a name or legend instead of a distinctive colour. Dorme had the words "Père Dorme" painted on his machine.⁷ J. R. McConnell had "Mac." on his⁸; Wellman's special mark was "Celia," his mother's name.⁹ Sometimes the airman ventured into something like gasconade. The French "Ace," Maxime Lenoir, had the words "Trompe la

¹ F. de Tesson, *Quand on se bat*, 1916, p. 166.

² Lieut. Marc, *Notes d'un Pilote disparu*, 1918, p. 141.

³ "Flight," *The Flying Yankee*, 1918, p. 123.

⁴ Bishop, *Winged Warfare*, p. 100.

⁵ Briscoe and Stannard, *Capt. Ball, V.C.*, 1918, p. 223.

⁶ *New England Aviators*, ii. 7.

⁷ See letter dated 20 August, 1916, from Dorme himself in *La Guerre aérienne*, 28 March, 1918, p. 324.

⁸ J. R. McConnell, *Flying for France*, 1917, p. 129.

⁹ W. A. Wellman, *Go, Get 'Em*, 1918, p. 143; see, for a similar case, Nadaud, *En Plein Vol*, 1919, p. 23.

Mort" painted on his aeroplane.¹ The brave maxim did not save him from death in air combat. Another French pilot, more boastful in his blazon, came by a more inglorious end: he had inscribed on his Bréguet biplane the proud motto, "Le voilà le foudroyant," only to be brought down by the German "Ace," Udet, on 10 September, 1917.² Pierre Violet, who was killed on 27 December, 1916, bore on his machine "a catalan flag of blood and gold."³ From this to the "Mister Tank" which was inscribed on a British Sopwith encountered once by Voss,⁴ the fall was great. But the French, too, could sometimes be as self-depreciating as the English. Jules Védrines insulted his machine by writing on it "La Vache" in large letters.⁵

Camouflage marks.—Sometimes it was hard to tell whether the markings were the airmen's private emblems or camouflage. It was in the spring of 1917 that the variegated colouring of the German machines first became noticeable.⁶ Speaking of this time, Major Bishop says:—

"The scarlet machines of Baron von Richthofen's crack squadron, sometimes called the 'circus,' heralded the new order of things. . . . Later, nothing was too gaudy for the Huns. There were machines with green planes and yellow noses; silver planes with gold noses; khaki-coloured bodies with greenish-grey planes; red bodies with green wings; light blue bodies and red wings; every combination the Teutonic brain could conjure up. One of the most fantastic we ever met had a scarlet body, a brown tail, reddish-brown planes, the enemy markings being white crosses on a bright green background. Some people thought the Germans had taken on these strange lines as a bit of spring camouflage; but they were just as visible or even more so in the startling colours they wore, and we put it down simply to the individual fancies of the enemy pilots."⁷

Mr. Percival Phillips of the *Daily Express*, writing on 10 May, 1917, of the highly decorated German machines, says:

"'It is like going out to fight birds of Paradise,' said one scout, who complained facetiously that the dazzling tints of the Albatross and Aviatik machines nearly blinded him. Never has there been such an orgy of kaleidoscopic effects on the earth or above it. The Hun has taken to daubing his machines fantastically, after the manner of a

¹ See the photograph in *La Guerre aérienne*, 29 March, 1917, p. 309.

² Udet, *Kreuz wider Kokarde*, 1918, p. 46.

³ *La Guerre aérienne*, 12 July, 1917, p. 557.

⁴ Udet, *Kreuz wider Kokarde*, p. 152.

⁵ *Flight*, 4 September, 1914.

⁶ See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 242.

⁷ Bishop, *Winged Warfare*, p. 127.

savage who hopes to frighten his foe to death. A child let loose with a box of paints could not achieve more lurid results."¹

The system of protective colouring was adopted also by the British air forces. "I have met English machines painted in the most marvellous colours," Udet observes, and he adds as a remarkable feature of British aircraft that they bore the name of the firm that made them.² French machines were also fantastically coloured in many cases.³

Legitimacy of camouflage marks.—The camouflaging was sometimes so successful that an American airman could write:—

"I have seen enemy planes so cleverly 'doctored' with varying coloured paint that, from a thousand metres above, they would pass completely unnoticed, unless the eye chanced to catch the black iron crosses which are painted near the centre of the Boche's wings."⁴

But the strange markings of the German aircraft also had the effect in some cases of enabling the Allied airmen to identify their opponents' machines more readily.⁵ It sometimes happened, however, that the camouflage obscured the nationality marks upon the machines, and in so doing became a matter of concern to international law, which is otherwise indifferent to markings other than those appropriated to a State's service aircraft as a whole. A British pilot reported in January, 1918, that he saw some German machines which were "camouflaged blue and green and appeared to have no national markings of any kind."⁶ On other occasions the camouflage markings were mistaken for the nationality marks. Such a case probably was that related by M. Mortane as occurring in December, 1917, near Saint-Quentin, where a French machine, of Escadrille 213, was pursued by an aircraft of Nieuport type, with a

¹ Quoted in *The Aeroplane*, 16 May, 1917. See also W. Beach Thomas in the *Daily Mail*, 30 April, 1917: "Apparently to add terror to the spectacle some [of the German aeroplanes] were scarlet and some picked out in fantastic patterns." J. L. Garvin, in *The Observer*, 3 June, 1917, says the machines were painted in primary colours in order to make them inconspicuous to an assailant overhead. See also J. T. B. McCudden, *Five Years in the R.F.C.*, 1918, pp. 196, 212, 219, 225, 235, 273, 285; C. J. Biddle, *The Way of the Eagle*, pp. 127 and 277; C. C. Turner, *The Struggle in the Air*, 1919, p. 88; and F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War*), 1923, p. 248.

² Udet, *Kreuz wider Kokarde*, 1918, p. 152. The Turks were so struck by seeing the place of construction of a British machine—"from Liverpool"—marked on it that they mentioned the fact in a *communiqué*, dated 30 April, 1917.

³ See J. N. Hall, *High Adventure*, 1918, p. 85.

⁴ Wellman, *Go, Get 'Em*, 1918, p. 143. See also Noble, *With a Bristol Fighter Squadron*, 1920, p. 38.

⁵ Marc, *Notes d'un Pilote disparu*, p. 122.

⁶ Percival Phillips in *Daily Express*, 30 January, 1918, giving the pilot's statement.

tricolour (i.e. French) rudder. The French airmen did not fire upon it, but were themselves attacked, receiving a dozen bullets in their fuselage.¹ Almost certainly the "tricolour rudder" was really one camouflaged by coloured panels. A machine which is camouflaged in such a way that it appears, when within air-fighting range, to have false nationality marks, or none, cannot be considered to fulfil the conditions which are the basis of the recognition of combatant qualification.

On the other hand, to seek by one's own camouflaging to imitate the enemy's camouflaging would be no offence; it may be that the enemy has devised some good system of making his aircraft "invisible" by certain colourings specially arranged, and international law gives him no copyright in any such design. It is as permissible to copy it as it was for the Germans to imitate the special system of firing through the air-screw which they found in the captured aeroplane of Garros, or for the Allies to copy the German device of linked ammunition belts. It would also be legitimate to adopt the same coloured streamers as those used by the enemy to denote the machine of the leader of a squadron or flight.

Leader's marks.—The commander or leader of a squadron or flight often bore streamers from his machine, but sometimes special marks were used. Major C. J. Biddle speaks in September, 1918, of flying upon the battle front near Toul an aircraft which had no marks. "I was flying an extra plane without any distinguishing marks on it, while my own machine was being repaired. It was, therefore, difficult for the other men to recognise me."² If the machine had, quite literally, no distinguishing marks upon it, it was not entitled to be treated as a combatant aircraft, and if the user of it had been captured he might legitimately have been brought before a military court for an offence against the laws of war.³ But if, as is possible, the machine was merely not marked with the special marks designating the commander of the squadron or flight, no irregularity arose and, of course, no charge could be founded on the absence of the special marks. The leader of a flying formation was usually distinguished by streamers from his

¹ Mortane, *Histoire illustrée de la Guerre aérienne*, i. 291.

² C. J. Biddle, *The Way of the Eagle*, 1919, p. 254.

³ That is, if the intention was to deceive the enemy. It is improbable that a charge would have been preferred in such a case as that recorded by M. Baring, *R.F.C.H.Q.*, p. 116, where he speaks of the consternation caused by the flight of a Henry Farman machine, *without marks*, over the King's billet during his visit to France in October, 1915. The machine was found to be that of the French *liaison* officer who used to fly backwards and forwards between France and England.

struts or wings. References to the use of such streamers on both sides are frequent in the memoirs of the German pilots,¹ and sometimes, apparently—one cannot tell exactly how—when the original leader was shot down, streamers were at once displayed by the second in command.²

The combatant status of the occupants of the machines.
—Of the two conditions necessary to establish the combatant qualification of a manned aircraft, the one which relates to the status of the occupant of the machine is illustrated by no such wealth of evidence from the precedents of the great war as the other which relates to the distinctive marking of the machine itself. The evidence upon this point is, indeed, negative in character. No case appears to have arisen in which the combatant status of a captured airman was questioned. It is true that in a few cases airmen were deprived for a time of the privileges of prisoners of war, but they were so deprived because of some reason—the dropping of proclamations, the alleged use of incendiary bullets, or *lèse majesté* in calling Germans “Huns”—which was unconnected with the question of their personal qualification. There can, however, be little doubt that authorisation by a belligerent Government would be made a condition precedent to the recognition of an airman's combatant status, and that if a case arose in which a civilian, neither commissioned nor enlisted, took possession of a belligerent military aircraft (duly marked) to commit acts of hostilities on his own initiative, he would not be entitled to the privileges of a combatant, and could be brought to trial as a *franc-tireur*. Such a case need not be contemplated in practice. A more practical question is whether the wearing of uniform or of some fixed distinctive emblem should be required of military airmen, and upon this question the practice of the war does throw a little light. It tends to show that there would be considerable difficulty in securing the observance of a rule which made uniform or its equivalent necessary.³

¹ See Boelcke, *Feldberichte*, 1916, p. 115; Udet, *Kreuz wider Kokarde*, 1918, p. 116; Tutschek, *Stürme und Luftsiege*, 1918, pp. 109, 154; Jaeschke in *Das Fliegerbuch*, 1918, p. 57.

² Tutschek, *Stürme und Luftsiege*, p. 161.

³ More important to the airman than the uniform which enemy airmen may wear is the uniform which troops on the ground wear. In the Fifth Army's battles of March, 1918, “our air flights were worried because the French horizon-blue uniforms resembled from above the German field-grey, and as these French uniforms were usually behind the British fighting front, air scouting for information became difficult, and now and then erroneous” (W. Shaw Sparrow, *The Fifth Army in March, 1918*, 1921, p. 22). If the laws of land warfare did not already insist upon

The question of uniform.—The great war showed, and, because human nature is what it is, every war will probably show, that fighting airmen are often careless as to what they wear and are, in the matter of uniform, frequently a law unto themselves. They are disposed, naturally enough, to think that their combatant status is sufficiently denoted by the marks upon the machine in which they operate. The machine—the shell, if one may put it so, in which the crustacean moves and fights—is, indeed, to some extent the airman's uniform. In the French service especially the uniforms which the pilots wore were not, in many cases, orthodox French uniforms at all; individualism in dress was expressed to the point of eccentricity.

"In Aviation, one knows," writes an American officer in the French flying service, "there is no regulation uniform; each man is supposed to wear the colour and cut of his previous arm. The result is that each airman designs for himself a creation which he fondly believes is suited to his style of soldierly beauty—and many of these haven't the slightest connection with any known French or Allied uniform. One may see dark blue, light blue, horizon blue, black, and khaki; trousers turned up at the bottom; open-front tunics (like the British officers'), and every variety of hat, footwear and uniform."¹

Another American pilot who served in a French escadrille records that, at a review in honour of Guynemer on 12 November, 1917, when the pilots of five escadrilles were present, the mixture of uniforms was "unparalleled in its heterogeneity. Every branch of the service represented, and endless personal ideas in dress."² It is doubtful if the kind of uniform which appears to have been worn by some pilots in the French service could be properly regarded as the belligerent military uniform, unmistakable as regards its national character, which would be required in land warfare. Uniform that might be taken for a private chauffeur's livery, or for the uniform of a neutral service, would not fulfil the requirements of the land war rule.

Uniform sometimes not worn.—Apart from this irregularity, there was undoubtedly in the flying services a tendency to go into action, on occasions, *en déshabille*. "The American tunic, with its tight collar," wrote an American pilot on 25 May, 1918, "is almost impossible to fly in, if one is to do any looking

the wearing of distinctive uniform by land troops, the air war rules would have to do so.

¹ Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 211. See also C. B. Nordhoff, *The Fledgling*, 1919, p. 129.

² Stuart Walcott, *Above the French Lines*, 1918, p. 74.

to the rear. Hence I wore simply a sweater over my army shirt."¹ The same kind of thing happened also in the British service. Major Bishop states that once an alarm came just when he and his fellow-officers were engaged in a game of tennis. "We all ran to our machines. We were still in our white flannels and dressed more for comfort than a fight in the air. There was no time to change, however, so into the machines we crawled and started aloft." So dressed, they fought and scattered the German machines.²

"Games," says an officer who served in the Royal Flying Corps on the western front, "would sometimes be interrupted for the more exciting pleasures of the hunt, and, should a Hun be spotted in the sky (reversing the tactics of Admiral Drake in the days of yore), our aerial privateers would break off in the middle of a set of tennis, jump into their machines arrayed just as they were, in flannel trousers or shorts, chase and sometimes bag their quarry, and so return to their unfinished match."³

Ball is stated to have gone up in short sleeves on one occasion, in pyjamas on another, to attack German aircraft.⁴

"It was odd," says Lieut.-Col. J. E. Tennant, speaking of flying in Mesopotamia in 1916, "to see a pilot going off for a long flight dressed only in shorts, stockings, and shirt, with a helmet bound down on to his head, for at 5000 feet the sun's rays are as fierce as on the ground."⁵

In the "dawn patrol" many of the British pilots in France were accustomed to go out "in pyjamas, a Burberry, bedroom slippers, and snow-boots."⁶ Mr. J. M. N. Jeffries reported on 2 August, 1918, that an Austrian aeroplane was brought down off Valona (Albania) by two Italian machines on the previous day. "The pilot of one of these was bathing in the sea when the Austrian was sighted. He swam ashore fast, put on pyjamas over his bathing things, and thus strangely dressed, helped to bring down the enemy at a point 30 miles from here."⁷

¹ Letter quoted in Hall and Nordhoff, *op. cit.*, ii. 117; see also p. 129, *id.*, for another case of sweater only being worn.

² Bishop, *Winged Warfare*, p. 250.

³ Major R. S. Wortley, "Recollections of the R.F.C. during the Great War," in the *Army Quarterly*, vol. vi. (1923), p. 357.

⁴ Briscoe and Stannard, *Capt. Ball, V.C.*, 1918, pp. 192, 225; "Flight Commander," *Cavalry of the Air*, 1918, p. 55.

⁵ Tennant, *In the Clouds above Baghdad*, 1920, p. 36.

⁶ A. J. L. Scott, *History of 60 Squadron*, p. 53.

⁷ *Daily Mail*, 6 August, 1918; another case in which a pilot—a Russian—took the air in pyjamas in order to destroy an enemy aircraft, is mentioned, but with reserve, in *The Aeroplane*, 9 February, 1916.

Uniform not essential.—It cannot be contended that the pilots who fought thus without uniform broke the rules of warfare, and that, if they had fallen into the enemy's hands, they could have been denied combatant rights. One American pilot who was not in uniform did fall into the enemy's hands, but was treated as an ordinary prisoner of war. H. B. Willis, who was shot down on 18 August, 1918, stated in a letter written from a prisoners' camp: "I had left the ground in two sweaters, no coat, and with no money."¹ Austrian airmen not in uniform were also captured by the Russians. Early in 1915, a note from the Russian Chief of Section was dropped, with two letters from Austrian prisoners, on an Austrian aerodrome: "Airmen of yours have been taken prisoners in civil costume. They said that our officers have also, which we doubt. Please let us know what is the character of the serious wound of Lieut. X., taken prisoner by you on Jan. —th." No further information appears to have been given about the airmen stated to have been dressed as civilians, but it is quite clear from the friendly tone of the subsequent messages interchanged between the rival air forces that no charge of war crime can have been formulated against the airmen so dressed.²

A rule requiring an airman to wear uniform on all occasions is unlikely to be observed in practice; and if it is so framed as to make either uniform or some fixed, external, distinctive badge or emblem obligatory, so that his combatant status may be recognised in the event of his being separated from his machine, it is objectionable on various grounds. In the first place, an airman so detached comes under the rules governing land troops, and no provision need be made for the case in the special rules for air warfare. In the second place, the first thing which an airman who has had a forced landing in enemy territory is likely to do is to rid himself possibly of his uniform, certainly of his cumbersome flying kit, to which, presumably, the badge or emblem (if it is worn) would be attached. It is recorded, for instance, that when a German machine was brought down in Macedonia on 17 February, 1916, "the pilot, who was wounded, discarded his uniform and took to flight, but was captured three hours later by a French patrol."³ Finally, such a rule would imply that a pilot, not in possession of the required uniform or emblem, was not entitled to be

¹ Letter quoted in Hall and Nordhoff, *The Lafayette Flying Corps*, i. 494-5.

² Bernard Pares, *Day by Day with the Russian Army*, 1915, p. 168.

³ *Flight*, 24 February, 1916.

treated as a qualified combatant if captured while attempting to escape. Now, it is quite certain that, in the practice of war, a soldier who is captured or re-captured in civilian clothes while seeking to escape, is not denied combatant rights. If there are special circumstances pointing to his having engaged in espionage he would be brought to trial as a spy, but the mere fact of his endeavouring to escape in civilian clothes would not deprive him of his combatant quality. No war court would condemn him on that ground alone. In the great war, both in England and in Germany, there were numerous cases of the attempted escape of prisoners of war, and in most of them the attempt was made in disguise. Again and again the escaping prisoners were recaptured before they had reached the frontier. One French flying-officer, Capt. de Goys, who succeeded finally in escaping towards the end of 1917, had already made ten separate attempts, unsuccessfully, and had on one occasion reached a place within a few hundred yards of the Swiss frontier.¹ Prisoners who were re-captured while escaping in disguise were not treated as spies, even when that disguise took the form of the enemy's uniform. A French sergeant, Michel Doré, with two companions, escaped on 18 December, 1915, from the prisoners' camp at Wahn, near Cologne, all three being dressed as German corporals in uniforms which they had stolen. They were re-captured when only four kilometres from the Dutch frontier, and were sent to the "reprisal" camp at Soltau, but were not treated as spies.² Major Evans, of the Royal Flying Corps, and Lieut. Kicq, a Belgian officer, escaped from Clausthal Camp in Germany dressed as civilians but were re-captured—in Major Evans's case when only 20 yards from the Dutch frontier; they were placed in *Stubenarrest* and were then removed to the *Strafe* camp at Ingolstadt, but no suggestion arose that they should be regarded as spies. Nor was any suggestion of the kind made in cases, mentioned by Major Evans, in which Allied officers escaped from prison camps disguised as German officers or under-officers, or workmen, and were re-captured before reaching the frontier.³ Recaptured prisoners were kept in stricter confinement, sometimes punished in other ways, after their attempts to escape, but

¹ See the account by de Goys quoted in *The Aeroplane*, 12 December, 1917.

² *La Guerre aérienne*, 9 January, 1919, pp. 27-8. Doré succeeded later in escaping. See also another case of escape in German uniform—that of Sergeant-pilote Pinchard—in *La Guerre aérienne*, 25 October, 1917, p. 794. See also later, pp. 443-4, for instances of very long distances being covered by escaping prisoners.

³ A. J. Evans, *The Escaping Club*, 1921, pp. 15-7, 21, 37-47, 61, 95-7.

only in one case has the writer been able to trace a definite charge of espionage brought against an escaping prisoner. This was the case of the French airman, Valentin Bourdet, who, after a previous unsuccessful attempt to escape, managed to elude his guards when being transferred from one internment camp to another, and crossed the Black Forest to the borders of Switzerland. When within a few yards from the frontier, he was seized by a German soldier. He was accused of espionage and was condemned by a council of war to death, but applied for, and was granted, a further inquiry; the armistice came before this second inquiry was concluded.¹ It is probable that there were in this case special features distinguishing it from the normal cases of the kind; it may, for instance, have been alleged that Bourdet had been seeking to collect military information.

Uniform not necessary to establish combatant quality.—

If it be argued that, in the absence of uniform, there will be no evidence of that State authorisation which international law requires of combatants, the answer is that there are other means of establishing the air fighter's personal military status. It is customary for military *personnel*, in the air as in other services, to carry some evidence of identity, either in disc or card form. It was thus that the German authorities were able to identify, and to publish the names of, the Allied pilots killed in action on the German side of the line; the cases in which the name is not given are probably those in which a machine was brought down in flames and all evidence of identity was burnt. The identity of Guynemer was established by the finding of his *carte d'identité* upon his body.² It is possible that the identity of the elder von Richthofen was similarly discovered when he was killed in the British lines.³ A *bona-fide* commissioned officer or enlisted man who is captured should have little difficulty in proving that he is an authorised combatant.

No "colour line" in air warfare.—It should be added that, provided the air fighter is a commissioned officer or enlisted man, and provided he fights honourably and in

¹ Maurice Médoret, *Le Maréchal des Logis Valentin Bourdet*, in *La Vie aérienne*, 17 July, 1919, p. 464.

² See photograph of it in *La Guerre aérienne*, 25 July, 1918, p. 587; it gives his grade, name, squadron, signature, and photograph.

³ "I believe it is a fact that at the time he [Von Richthofen] was brought down he was wearing mechanic's overalls, and except for the card in his pocket there was little to show what he was" (Illingworth, *History of 24 Squadron*, p. 41). For the *pièces d'identité* of German airmen, see *La Guerre aérienne*, 8 August, 1918, p. 623.

accordance with the rules of civilised war, his race, as such, is immaterial. The rules of war set up no "colour line." An American negro, Eugene Bullard, served in the French Escadilles 93 and 85, from August to November, 1917, and won the *croix de guerre*, with star, for gallantry.¹ A young Indian, Lieut. Indra Lal Roy, from Calcutta, served with great distinction in the British Air Force. He was officially credited with nine enemy machines, was awarded the D.F.C., and was killed in air combat on 22 July, 1918.² Another young Indian who served in the Royal Flying Corps, 2nd Lieut. E. S. C. Sen, first cousin of the Maharajah of Cooch Behar, was captured and, according to his letters, was well treated as a prisoner of war.³ There was in the French service a Chinese pilot named Tsu, who had been a student in Paris when the war began; he brought down several German machines.⁴ A native of Annam served with great distinction in the French air service both before and during the war, winning the Legion of Honour and the *croix de guerre*; the victim of many wounds and of one terrible crash, he passed into the infantry and was killed in the Somme battles.⁵

SECTION II.: BELLIGERENT RIGHTS.

Combatant aircraft alone allowed to take part in hostilities.—Clear differentiation of the belligerent military "unit" of air warfare—the aircraft and its crew—from other air "units," whether these be enemy military aircraft, private aircraft of any kind, or those public aircraft which are non-military in character, is an essential condition precedent to the observance in air warfare not only (as already stated) of the rules of loyal fighting between the belligerent units themselves but of the remission of the rigours of war in favour of the non-military units. Private aircraft could not be granted any immunity from the attack of belligerent military aircraft if they were free on their side to take part in hostilities. A rigid abstention from all warlike action is the first and all-

¹ Hall and Nordhoff, *The Lafayette Flying Corps*, i. 151. The American Expeditionary Force in France in 1918 included two "coloured" Divisions—the 92nd, which had also coloured officers, and the 93rd, which had white officers (F. Palmer, *Our Greatest Battle*, 1919, p. 50).

² See *London Gazette*, 21 September, 1918; *Flight*, 5 September, 1918.

³ See letter quoted in the *Evening News*, 6 October, 1917.

⁴ See *The Aeroplane*, 11 October, 1916; *La Guerre aérienne*, 5 April, 1917, p. 333.

⁵ Marcel Nadaud, *En Plein Vol*, 1919, pp. 178-82.

essential foundation of the right of non-military aircraft to those privileges which humanity requires that they should be allowed.

What are "hostilities"?—If non-military aircraft are forbidden to take part in hostilities, it is necessary to determine what acts amount to hostilities. The term could clearly be interpreted in various ways. Some acts which do not involve actual warlike violence might be brought within its scope; others correspond rather to the "unneutral service" which neutral merchant vessels are penalised for rendering, but which do not amount to acts of war. To understand the problem which presents itself it is useful to consider the rules applicable to analogous acts in maritime war.

The maritime rules.—Generally speaking, one may say that in maritime law no very sharp line is drawn between neutral vessels taking part in hostilities and those engaging in unneutral service. The Declaration of London assimilated such vessels "taking a direct part in hostilities" to those under the orders or control of an enemy Government, or in its exclusive employment, or serving as a transport for enemy troops, and subjected them all alike to the treatment applicable to enemy merchant vessels. Neutral merchant ships, on the other hand, which undertake a special voyage for the transportation of individual passengers embodied in the armed forces of the enemy, or (with the knowledge of the owner, charterer, or master) of detachments or individuals who, in the course of the voyage, directly assist the operations of the enemy, were liable to condemnation in prize, according to the same Declaration, but not to be treated as enemy vessels. In practice, the result of this difference of treatment was that neutral ships taking part in hostilities or in the *graver* forms of unneutral service, could be shelled and sunk forthwith, a fate which those merely engaging in the less damaging kind of unneutral service escaped, the penalty for them being the liability to be taken into port and condemned as prize. Nothing was laid down either in the Declaration or in any of the Conventions of The Hague as to the treatment as unqualified combatants of neutral merchant ships taking part in hostilities.¹

¹ Among the rules for maritime war proposed by the Institute of International Law at its Oxford session of 1913 was one that "when a public (sc. non-military) or private vessel has taken part, directly or indirectly, in hostilities, the enemy may detain as prisoners of war all the members of the ship's personnel without prejudice to any other penalties which may be incurred."

The last line of this provision was added on Prof. Oppenheim's suggestion in order to meet the case of a private ship taking the initiative in an attack; such a

No doubt in practice the liability of a neutral master to have his ship sunk at sight was considered to be a sufficient deterrent, without the addition of the threatened fate of being hanged at the captor's yard-arm.

Merchant vessels and hostilities.—The case of a *belligerent* merchant vessel taking part in hostilities—according to the captor's allegation—arose on several occasions in the great war. The most famous case was that of Capt. Fryatt, who was shot by the German authorities for having tried to ram a German submarine. His ship was unarmed, and it was for this reason that he was shot as a kind of maritime *franc-tireur*. Other British merchant officers who were captured and tried for acts of hostility against German war vessels were not shot, apparently on the ground that their ships were armed.¹ The principle upon which the Germans made this distinction is obscure; the arming of a non-combatant vessel would logically not affect its character at all, granted the German contention that no merchant vessel is under any circumstances entitled to attack a belligerent war vessel. Germany, however, stood alone in its attitude to the question of defensive attacks by belligerent merchant vessels. Great Britain and the United States have always held that such vessels are entitled to resist both attack and visit and search.² Neutral merchant vessels, on the other hand, while entitled to resist attack by pirates or by submarines not complying with the established rules of international law, have no lawful right to resist the exercise of the right of visit and search by the commissioned public ships of a belligerent; and if they do so resist, their officers and crews are probably not entitled to be treated as prisoners of war.³

Maritime, land, and air warfare conditions compared.—It is mainly because the merchant ships of belligerent States are thus recognised as having a right to resist visit and search, and such ships, and, in certain circumstances, neutral merchant ships are entitled to resist actual attack, and to this extent to "take part in hostilities," that the distinction between "combatant" and "non-combatant" units has never been emphasised in maritime war to the same extent as in land war.

ship, he pointed out, must be regarded as a pirate, and its crew would not be entitled to the privileges of prisoners of war (*Annuaire de l'Institut*, 1913, p. 571).

¹ Garner, *Int. Law and the World War*, i. 410.

² *Ibid.*, i. 385-97; Oppenheim, *Int. Law*, ii. § 181; J. A. Hall, *Law of Naval Warfare*, p. 53.

³ Garner, *op. cit.*, i. 414; Pearce Higgins, *Defensively Armed Merchant Ships and Submarine Warfare*, pp. 13, 23.

The conditions of land war are not analogous ; nothing corresponding to the "levy in mass," for example, exists in sea warfare, and it is unsound to base a maritime rule on one applying in land war.¹ Air warfare in turn differs from both the other kinds of war, but its circumstances approach those arising now in the one, now in the other. It is more akin to land warfare in that the conditions in which it is waged make it necessary to deter non-military units from participating in hostilities by attaching to such participation the penalties consequent upon war crime. It is fairly parallel with maritime war in so far as the acts in which non-military aircraft may engage without actually committing hostilities correspond to those which private enemy or neutral vessels may perform for a belligerent and which, when performed by neutrals, are classed as "unneutral service."

Connotation of "hostilities" in the air.—One may expect the practice of air warfare to follow that of land war in differentiating sharply between "hostilities" and the performance of services which do not come under that term. "Hostilities" will probably be held to include, broadly, all acts of warlike violence ; whether these will include forcible resistance to the legitimate orders of a belligerent's land, sea, or air forces is a doubtful question. Undoubtedly aircraft will be entitled to try to escape, when challenged ; to do so will entail their being fired upon but will hardly constitute war crime. Whether they will further be entitled forcibly to resist "visit and search" or capture is a question which the practice of belligerents will have to decide.

Espionage and analogous acts.—There remains the intermediate category of acts which are not actively violent but are not less damaging, and are for that reason assimilable rather to acts of hostilities than to the transport or other

¹ An example of this illegitimate use of analogy may be seen both in the German contention that Capt. Fryatt's case was similar to that of a *franc-tireur* in land war, and in Professor Garner's rejoinder that in so contending the Germans "proceeded on the unwarranted assumption that his status was the same as that of a civilian in land warfare who resists the authority of a military occupant, rather than that of a civilian who in unoccupied territory resists the approach of an invader." There is in this rejoinder an assumption that the latter civilian would *not* be an unlawful combatant, but this assumption is itself a misconception of the land war rule, which allows combatant status not to *individuals* who rise in arms to resist an approaching enemy, but to *massed bands* who do so—a very different thing (see the author's *War Rights on Land*, pp. 52-3). But, in fact, the land war rules have no real bearing at all on such a case as Capt. Fryatt's. His case came under maritime law, and under that law one cannot resist the contention of Sir Edward Grey at the time that he "acted legitimately in self-defence, for the purpose of evading capture and destruction." That in *land* war his action would have been illegitimate is entirely immaterial. See J. A. Hall, *Law of Naval Warfare*, 1921, p. 54.

services which a private or neutral craft may render without committing war crime. This intermediate category is composed almost entirely of acts amounting to, and punishable as, espionage. In practice it will not be found necessary to treat these acts as "hostilities," for the penalty of espionage is as deterrent as that of war crime. But one kind of act which would not be classed as espionage, and which is not an act of warlike violence, but which, nevertheless, is so gravely damaging to a belligerent's interests that it must be visited with the heaviest punishment, will be placed in the category of acts of hostilities.

The transmission of military intelligence.—The act referred to is the transmission by a non-military aircraft in flight of military intelligence for the immediate use of a belligerent. Such an act will not necessarily constitute espionage, for the information transmitted may not have been obtained within belligerent jurisdiction or in the zone of belligerent operations. It may have been entrusted to the non-combatant aircraft before its departure, perhaps in neutral jurisdiction, for transmission to a belligerent warship or aircraft encountered in the flight. Drastic punishment of such interference in belligerent operations is necessary because of the exceptionally damaging nature of the act in question. Its consequence may be the destruction of an army or of a fleet. It is even more damaging than the action of the spy in land war, for the spy's power of observation and ability to evade capture are inferior to the air traveller's. The spy, whose motive may be the purest patriotism, is shot *in terrorem*; so, too, should be the air traveller who transmits military intelligence in flight, even to his own national forces. The conditions of air warfare have made it necessary to re-consider and enlarge the definition of espionage or war crime in several respects. As is stated in a later chapter, the "special missions" which aircraft undertake have introduced a new problem in international law and one requiring special treatment. So, too, with this question of the transmission of military information in flight. The same reasons which make it necessary to single out the spy for special punishment justify the attaching of penalties as deterrent to acts which, though not technically espionage, are similar to it in being exceptionally dangerous to a belligerent's interests and very difficult to prevent.¹

¹ As regards the Russian threat to treat the transmission of intelligence from the S.S. "Haimum," chartered by *The Times*, in the Russo-Japanese War, as espionage, see J. A. Hall, *Law of Naval Warfare*, pp. 124-5; Fauchille-Bonfils, *Droit Int.*, ii. § 1395 (25).

When such transmission is a war crime.—If, however, this new category of war crime is recognised, it must not be extended beyond carefully defined limits. It must be restricted to cases in which (1) there is an actual proved transmission of military intelligence *during the aircraft's flight*; and (2) that intelligence is of *immediate military use and importance* to the belligerent for whose benefit it is transmitted. The ordinary carriage of messages or dispatches, not signalled nor wirelessly from the aircraft, but merely passively conveyed, cannot be held to be war crime; it may be unneutral service, or an act of active assistance to a belligerent, and as such it may involve penalties (confiscation of the aircraft, detention of the crew), but they will not be the penalties attaching to war crime. Again, the information transmitted must be of a nature to effect the plans or dispositions of the belligerent damnified. "Military intelligence" is a wide term and would cover press reports of an entirely innocuous character as well as messages of a really vital import in their bearing upon future strategical or tactical plans. The kind of information which it is a belligerent's interest to prevent air travellers from sending is that which discloses some important military secret, communication of which to the enemy at that moment may have disastrous consequences. Anything short of this, such as the sending of information about past military events or about matters of a general but not immediately important military interest can be punished by measures less drastic than the arraignment of the delinquent upon a charge, the normal penalty for which is death.

Summary of the section.—One may summarise the position, then, by dividing the noxious acts which non-combatant aircraft may perform for a belligerent into three broad classes.

I. Acts of *hostilities* will be held to include (1) all acts of warlike violence; and (2) the transmission during flight of military information in a belligerent's interests. The crew of a non-combatant aircraft engaging in such acts will be liable on capture to be brought to trial as *unqualified combatants*.

II. Acts of the kind in which, while they do not involve warlike violence, combatant aircraft also engage, such as *reconnaissance and observation work*, will be treated as *espionage* and the crew of a non-combatant aircraft taking part in such work will be liable, on capture and conviction, to be shot as spies.

III. Other acts which, though reprehensible in a belligerent's eyes, are less serious in their military consequences

than those above referred to, and which will mainly consist of the *carriage of military persons, stores or messages*, will be regarded (1) as *unneutral service*, if performed by neutral aircraft, (2) if performed by enemy private aircraft, as acts amounting to *special and active assistance to the enemy*. The penalty will be, not the condemnation of the crew for war crime, but their detention as prisoners of war, and, in addition, where a neutral aircraft is concerned, the confiscation of the aircraft. (An enemy private aircraft will be confiscable in any case.)

SECTION III.: THE AIR WARFARE RULES.

Combatant status and the classification of aircraft.—The Air Warfare Rules drawn up by the Commission of Jurists at The Hague in 1923 contain provisions in regard to combatant qualification as well as rules of a wider purview relating to the classification of aircraft generally. Where, as in air navigation, conditions are new and practice unformed, the definition of military aircraft involves also the definition of the units with which such aircraft are contrasted. No similar necessity arises in regard to ships. Long practice has established differentiation and nomenclature beyond all possibility of question where marine vessels are concerned. In dealing with aircraft, however, one must begin by defining one's terms; nay, rather, one must begin by prescribing the conditions which the various kinds of aircraft must fulfil if they are to be recognised as coming within the classes for which rules are laid down.

The classification of aircraft in the Air Navigation Convention, 1919.—It is necessary in these rules to take as a basis the classification adopted in the Air Navigation Convention of 1919. It is true that that Convention does not bind its signatories as belligerents or neutrals in the event of war; and in any case a large number of States have not ratified nor adhered to it. Nevertheless, account must be taken of its terms for two reasons. In the first place, rules which have been agreed after careful consideration for times of peace ought also to be applicable to times of war unless, and except in so far as, they can be shown to be rendered unsuitable to the changed conditions which war brings about. In the second place, many signatory States are fairly certain to remain entirely outside the struggle in the event of a war, however great, and as between these States the Convention will remain

in force. It would obviously be inconvenient if the rules governing classification and marks applicable as between these non-belligerent States were entirely inconsistent with those applicable as between them and the States to whom they stand in the relation of neutrals to belligerents. For these reasons the Jurists at The Hague in 1923 followed so far as possible in their rules for the classification of aircraft those already laid down in the Convention of 1919.

The Air Warfare Rules.—The rules governing combatant qualification and the classification and marks of aircraft are as follows :—

Article 2.

The following shall be deemed to be public aircraft :—

(a) Military aircraft.

(b) Non-military aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

Article 3.

A military aircraft shall bear an external mark indicating its nationality and military character.

Article 4.

A public non-military aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public non-military character.

Article 5.

Public non-military aircraft other than those employed for customs or police purposes shall, in time of war, bear the same external marks, and for the purposes of these rules shall be treated on the same footing as private aircraft.

Article 6.

Aircraft not comprised in Articles 3 and 4 and deemed to be private aircraft shall carry such papers and bear such external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

Article 7.

The external marks required by the above articles shall be so affixed that they cannot be altered in flight. They shall be as large as is practicable and shall be visible from above, from below, and from each side.

Article 8.

The external marks, prescribed by the rules in force in each State, shall be notified promptly to all other Powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other Powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified by each Power as soon as possible to all other Powers and at latest when they are communicated to its own fighting forces.

Article 9.

A belligerent non-military aircraft, whether public or private, may be converted into a military aircraft, provided that the conversion is effected within the jurisdiction of the belligerent State to which the aircraft belongs and not on the high seas.

Article 10.

No aircraft may possess more than one nationality.

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Article 13.

Military aircraft are alone entitled to exercise belligerent rights.

Article 14.

A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the State ; the crew must be exclusively military.

Article 15.

Members of the crew of a military aircraft shall wear a fixed distinctive emblem of such character as to be recognisable at a distance in case they become separated from their aircraft.

Article 16.

No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term "hostilities" includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

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Article 19.

The use of false external marks is forbidden.

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Article 61.

The term "military" throughout these rules is to be read as referring to all branches of the forces, i.e. the land forces, the naval forces, and the air forces.

"Public" and "State" aircraft synonymous.—The word "public" is used, it will be observed, in Article 2, instead of the word "State" which appears in the Convention of 1919 (Art. 30). This alteration is of no significance; the word "public" bears the same meaning in this and the succeeding Articles in which it appears as the word "State" in the former Convention.

The principle of the classification—As in the Convention of 1919, the criterion of public non-military aircraft is their exclusive employment in the public (or State) service. Public or State ownership is not adopted as the test of character. The test is not, however, one of an entirely objective nature. It is "employment *in*," not "employment *on*," the public service which is the governing principle. The quality of a

public non-military aircraft results from its being employed in a service which is, in fact, organised as a State undertaking. To be recognised as a public non-military aircraft an aircraft is required to carry papers proving its exclusive employment in the public service and to bear the nationality and character marks of such an aircraft.¹ For military aircraft the rules are different; they do not prescribe exclusive employment in the State's military service (though this is no doubt implied), but they do require the military aircraft (1) to bear the military mark of such aircraft, (2) to be under the command of a military person, (3) to have an exclusively military crew. The further condition, that the crew must wear a fixed distinctive emblem (Art. 15) is not, apparently, a condition precedent to its being recognised as a military aircraft, but rather one (as the Article states) to the recognition of the crew as combatants if they become separated from their aircraft. The objections to a provision of the kind have already been stated in this chapter.² The effect of the third of the other three requirements, namely, that the crew must be exclusively military, is not altogether clear. Since it is included in an Article which requires the aircraft to be under the command of a commissioned or enlisted person, and since this requirement is undoubtedly a condition of combatant status, one would expect it also to be a condition of the same kind, viz., one upon which the recognition of the combatant status of the aircraft depends. It is possible, however, that the effect of a crew's not being exclusively military would be to deprive not the aircraft itself, but merely the personnel concerned (perhaps one man among the crew) of combatant status. The question is obviously of some importance to the persons who may be immediately affected.

The classes of public aircraft.—Article 30 of the Convention of 1919 makes a distinction between State aircraft employed on military, customs, and police duties and State aircraft employed on other duties. Aircraft of the latter kind are treated as private aircraft and are subject, as such, to the provisions of the Convention. Provided, therefore, that they conform to the rules laid down in the Convention, they enjoy freedom of innocent passage above the territory of all contracting States in the same way as private aircraft. On the other

¹ It is not laid down that a public non-military aircraft shall be in charge of a person in the public service of the State, but no doubt the commander or pilot would in practice be in the State service.

² See pp. 83-5.

hand, military aircraft may not fly over the territory of another contracting State nor land therein without special authorisation,¹ and the conditions under which police and customs aircraft may cross another contracting State's frontiers are a matter to be determined by special accord between the States concerned.² The reason for this differentiation between customs and police, on the one hand, and, on the other, other public non-military aircraft is that the former are not employed upon duties which necessitate normally the entry of another State's jurisdiction, whereas other kinds of public aircraft may possibly be engaged in air traffic of a distinctly international character. A State postal air service, for instance, would be much more akin to the private air traffic for which the Convention legislates than to customs and police work, and this would be true also of a State-controlled passenger or commercial air line if such should be organised in the future. The Air Warfare Rules follow the Convention of 1919 in assimilating to private aircraft "public non-military aircraft other than customs or police." The practical effect is that the only aircraft left in the class of "public non-military" are the customs and police aircraft, for all other public non-military aircraft are marked and treated as private aircraft. Where, as in Italy, the customs service is part of the army organisation and customs aircraft are military aircraft, the sole public non-military aircraft would be those employed on police duties. Legally and formally, however, the position is that the State aircraft employed on postal or commercial work are classed as "public non-military," which, for purposes of convenience, are marked and treated as private aircraft.

The provisions as to marks.—The marks to be borne by the various classes of aircraft in time of war are not detailed precisely in the Air Warfare Rules in the same way as the nationality and registration marks for private aircraft are prescribed in Annex A of the Air Navigation Convention of 1919. It is merely provided that they shall be such as to indicate the nationality and character of the aircraft. So far as private aircraft are concerned, the marks required by the Convention of 1919 will no doubt be regarded as sufficient for this purpose.³ As regards public aircraft, the Convention of

¹ Art. 32, Air Navigation Convention, 1919.

² Art. 33, Air Navigation Convention, 1919.

³ These "marks" are groups of letters in large capitals: the first is the nationality mark assigned to each contracting State—G for the British Empire, F for France, I for Italy, etc.; the four following letters are the registration mark which

1919 prescribes rules for the marks only of those which are treated as private aircraft, i.e. public aircraft other than military, customs, and police; the marks prescribed are the ordinary private aircraft marks, underlined with a black line.¹ How military, customs, and police aircraft shall be marked is a question for each State to determine at its discretion, subject to compliance with the requirements of the Air Warfare Rules that the marks shall be as large as practicable, visible from each side, from above and below, and unalterable in flight.

Alteration of marks in flight.—The last requirement—that the marks shall be so affixed that they cannot be altered in flight—is one of very doubtful utility. It is designed, of course, to prevent the manipulation of the nationality and character markings for illegitimate purposes. But it is unlikely in the extreme that any *malâ fide* alterations of this kind would be made during actual flight; they would be made on the ground, and in that case would not be prevented by the provision in question. They would, however, then constitute, it is to be presumed, an infraction of the later rule (Art. 19) which prohibits the use of false marks, and that prohibition should be sufficient to prevent the illegitimate practice which it is the object of Article 7 to prohibit. A more useful provision would have been one to the effect that the mark indicating nationality and military character must be larger and more prominent than any formation or other marks upon the aircraft.

Notification of the marks.—Article 8 of the Air Warfare Rules provides for the notification of the marks prescribed by each State to all other Powers. So far as the private aircraft of States which are parties to the Air Navigation Convention of 1919 are concerned, no notification of the nature of the marks of such aircraft would be necessary, since the Convention itself prescribes what they are to be and provides, moreover, in Article 9, for an exchange every month of copies of registrations and cancellations of registrations of aircraft. That Convention does not, however, lay down any rules regarding the marks of other aircraft, and the effect of Article 8 of the new rules is consequently to supplement the provision of the Convention of 1919 by requiring all States which are parties to the new agreement to notify one another of the marks of their military and other public aircraft, or, if they are not parties to the

identifies the aircraft. Such marks would be sufficient to indicate clearly the nationality and private character of the aircraft bearing them.

¹ Air Navigation Convention, 1919, Annex A, Section 1, para. (b).

agreement of 1919, of their private as well as their public aircraft.

Changes of national marks.—The provision in the last paragraph of Article 8 has reference more particularly to the marks of military aircraft. It may happen that a State finds itself unexpectedly engaged in war with another whose service aircraft (possibly, e.g., because the States concerned were allies in a former war) bear marks so like its own as to make confusion possible. It may also happen that a change of the military marks after the outbreak of war is found to be necessary; as is explained elsewhere, both British and American service marks were altered during the great war. The intention of the provision is to ensure that any such changes are notified in sufficient time to prevent the occurrence of misunderstandings and possible charges of bad faith.

Conversion of non-military into military aircraft.—Article 9 allows a non-military to be converted into a military aircraft provided the conversion takes place in the converting belligerent's jurisdiction and not upon the high seas. The question was not settled in a way that secured the agreement of all the Powers represented. The Article as it stands is intended to bar conversion of a non-military into a military aircraft upon an aircraft-carrier or other warship upon the high seas. The French delegation at The Hague in 1923 contended that conversion should be allowed not only in the circumstances referred to but even on a merchant ship or if the aircraft were floating by itself on the high sea, as a seaplane or flying-boat might be. The representatives of the other five Powers were unable to accept this view, and the rule in Article 9 was accordingly adopted by five votes to one, France entering a reservation.¹

Conversion of military into non-military aircraft.—The cognate question of the conversion or reconversion of a military into a non-military machine was also discussed at The Hague, but no rule was laid down upon the subject. Such conversion or reconversion is clearly legitimate within the converting State's jurisdiction. On the high seas it could only be necessary for the purpose of enabling a belligerent military aircraft, by converting itself into a private aircraft, to evade the rule prohibiting air entry of neutral jurisdiction and to obtain petrol, supplies, or information in neutral

¹ As regards conversion of merchant vessels into warships, see J. A. Hall, *Law of Naval Warfare*, 1921, pp. 51-3; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1310 (1)—1312 (1); A. Pearce Higgins, *The Hague Peace Conferences*, pp. 316-19.

territory by this means. But, since it would then presumably be necessary for the aircraft to be reconverted into a military aircraft, and since such conversion is legitimate only in the jurisdiction of the State to which it belongs, the question is of less practical importance than that for which Article 9 provides.

Conversion in neutral jurisdiction.—The question of the conversion of a non-military into a military aircraft in a neutral harbour is not dealt with in the rules; a case of the kind is conceivable, though hardly probable, where a belligerent warship (or aircraft-carrier) is lying in a neutral port or waters. Since conversion on a warship's deck on the high seas is forbidden, it follows *a fortiori* that conversion on board a warship in neutral waters is also illegitimate. If the emanation of sovereignty which the warship might be regarded as radiating from itself is insufficient upon the high seas (where there is no competing jurisdiction) to enable an aircraft upon the ship's deck to be converted, it must be still more insufficient for this purpose in neutral waters. The question is not, however, one of much practical moment.

The nationality of aircraft.—The rule in Article 10 that "no aircraft may possess more than one nationality" is the counterpart of Article 8 of the Air Navigation Convention of 1919, which provides that "an aircraft cannot be validly registered in more than one State." Article 6 of the Convention of 1919 ascribes to an aircraft the nationality of the State in which it is registered. Under the Convention of 1919 an aircraft may not be registered by a contracting State unless it belongs wholly to nationals of that State, or, if the owner is an incorporated company, unless the president or chairman of the company and at least two-thirds of the directors possess that State's nationality; the company must also fulfil the other legal requirements of the registering State. No similar provision appears in the Air Warfare Rules.

Radio messages from aircraft in flight.—The provision in Article 16 that "hostilities" include the transmission during flight of military intelligence for the immediate use of a belligerent has already been discussed. The effect of the provision is to render a pilot or other occupant of an aircraft other than a belligerent military aircraft liable to be brought to trial for war crime if captured and proved to have been guilty of the transmission in question. With this Article must be read Article 6 of the Rules for Radio, also drawn up at The Hague in 1923. That Article reads:—

" 1. The transmission by a vessel or an aircraft, whether enemy or neutral, by radio when on or over the high seas, of military intelligence for the immediate use of a belligerent is to be deemed a hostile act and will render the vessel or aircraft liable to be fired upon.

" 2. A neutral vessel or neutral aircraft which transmits when on or over the high seas information destined for a belligerent concerning military operations or military forces shall be liable to capture.

" The Prize Court may condemn the vessel or aircraft if it considers that the circumstances justify condemnation.

" 3. Liability to capture of a neutral vessel or aircraft on account of the acts referred to in paragraphs (1) and (2) is not extinguished by the conclusion of the voyage or flight on which the vessel or aircraft was engaged at the time, but shall subsist for a period of one year after the act complained of."

These provisions relate, necessarily, only to transmission of wireless messages, whereas Article 16 of the Air Warfare Rules refers to transmission of military intelligence by any means. On the other hand, the Radio Rule refers only to transmission on or over the high seas, while Article 16 would be applicable also to transmission over the land. The reason for the special provision in paragraph (3) in regard to the continuance of the liability to capture is that, ordinarily, such liability terminates with the voyage upon which the vessel was engaged at the time of the noxious act. Before, however, the offence of transmission could be brought home to a particular vessel or aircraft the logs of many other vessels would probably have to be examined, and this examination could not, obviously, be completed during the comparatively short period of the offending vessel's voyage, still less during the brief period of an aircraft's flight.

CHAPTER V.

AIR COMBAT.

The reappearance of chivalry.—If air power bids fair to revolutionise war rights by altering, through its capacity for direct action, the whole position of civilian populations and their property in relation to belligerent destructive action, its coming is already having another effect, and one hardly less remarkable, upon the usages of war. It is serving, that is to say, to introduce or to re-introduce in warfare an influence which has been so long absent that its reappearance is practically an entirely new development, and that influence is one which is certain profoundly to affect the laws and usages of war. The influence in question is *chivalry*.

What chivalry is.—Chivalry is difficult to define but it means broadly, the waging of war in accordance with certain well-recognised formalities and courtesies. It is an influence quite distinct from the humanitarian one; indeed, it prevailed in its full vigour at a time in which humanitarian interests were otherwise entirely disregarded: witness the cruelty of the Black Prince to the people of Limoges. It is again free from any necessary connection with Christianity; Saladin was as chivalrous as Cœur-de-Lion. It is, indeed, the spirit, pure and simple, of knighthood. It expresses in effect the feeling of the combatants that they belong to a caste, that their encounter in arms is a high ceremonial, that an opponent is entitled to all honour and respect, that your enemy, though he is your enemy, is at the same time a brother in the same noble family of knights-at-arms. Until gunpowder came to democratise war, chivalry and chivalry alone was an influence making for moderation in war. It was the first motive power for the creation of a restrictive law of war.

Modern war and chivalry.—In modern times it has ceased to count. If one may put it so, war has become less and less the gentlemanly pursuit of a select class. It has become a business and a grim one. It has been industrialised

and—one can fancy the old warriors as complaining—sadly vulgarised. The fine gestures, the punctilio and courtesy of an age when men “passed with the light on spurs and spears,” have gone out of it. There is no room for ceremonial where efficiency of destructiveness is the sole test. It is true that one finds survivals here and there of the old order of things, but they are only survivals, anachronous and out of place. It is true also that a new influence, the humanitarian, has asserted itself, and has served to mitigate the extreme rigours of war. But that influence has started from a point quite separate from the sources of chivalry. It has regarded as worthy of compassion those whom chivalry despised. The idea of the knightly tourney had faded out of mind in modern war.

Aircraft and chivalry.—Now, cutting across the whole tendency of modern war, its ruthless intensity of purpose, its colossal materialism, its callous indifference to the individual, the old idea has reappeared to divert the current of the usage of war. It has reappeared, moreover, in strange company. It has presented itself as an incident of the final stage (to date) of the mechanisation of war. One would have expected the supreme manifestation of “the tyranny of the machine” to have had a very different result. If man is only “the machine’s means for making a new machine,” if his mission is merely to enable that other highly specialised combination of carbon and minerals—the metallic—to evolve itself, one would have hardly expected to find in this last and most ominous triumph of machinery an influence making for the revival of a spirit which is the very antithesis of all things mechanical. Romance and chivalry seem to have nothing in common with that doubly mechanical and coldly inhuman engine of war—a machine that flies carrying a machine that kills. Yet, strangely, the effect of the use of aircraft in war has been to restore to warfare something of the spirit which went out with the Middle Ages. After 600 years, chivalry has re-emerged in strange company as a force creating and shaping the usage of war. The *Jagd-flieger*, says Major Neumann, has revived the spirit of the knights of old.¹

The lesson of the war.—It is remarkable that writers upon international law have failed to notice this development. To even an acute jurist like Oppenheim the threatened disappearance of the moderating influences of chivalry and humanity presented itself as one of the lessons to be drawn

¹ Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, p. 452.

from the world war.¹ Such a moral may be drawn from the fighting on land and sea ; the air fighting gives warranty for no similar conclusion. In the land and sea operations there was evidence of a definite retrogression, or at any rate of a temporary abandonment of the advanced positions won during the nineteenth century in the progress towards moderation in war. The air fighting, on the contrary, indicated a notable and unexpected advance. To the writer's mind the lesson of the air war was unquestionably to demonstrate the extraordinarily high degree of chivalry that can be, and was, displayed in the new domain and to justify one in drawing the conclusion from that fact and from the coming predominance of the air arm that the rules of warfare—different, perhaps, from the old ones, but still fine and chivalrous rules—are likely to be recognised and practised in the future as they have never been in the past. It seems that the international law of war is destined to enter upon a new career of vigour as the result of the extension of the theatre of combat to the air spaces.

The spirit of the air fighting.—The evidence that the air forces fought with a greater mutual respect than the other arms is unchallengeable. It comes from sources so diverse and widely ranged that its cumulative effect is overwhelming. There is hardly a dissentient note in it all.² Some of the witnesses are, indeed, so unguarded and enthusiastic in their testimony that one must discount their evidence, which is, nevertheless, of value as showing the widespread impression prevailing among the participants in, and observers of, the air fighting that it was conducted in a spirit conspicuously lacking in the other operations. One would imagine from some of the statements on record that, with the airmen, one was back in medieval times. Some of the incidents—challenges to duels, in particular—read like extracts, brought up to date, from *Ivanhoe* or *The Lay of the Last Minstrel*.³ No doubt legends grew, but they grew upon a solid basis of fact. Instances of the chivalrous conduct of the airmen to their captives are given elsewhere, but the following incident, recorded in the

¹ Oppenheim, *Int. Law*, ii. § 67.

² For a dissentient note, see "Flight Commander," *Cavalry of the Air*, 1918, pp. 202-4 ; yet even he says : "Some have said that of all German soldiers the Hun airman fights most like a gentleman."

³ See, for instance, the story told by Lieut. B. A. Molter, *Knights of the Air*, 1918, pp. 27-32, of the challenge which Navarre sent to Boelcke ; Navarre was wounded before the named day, and a novice, Pérouse, took his place, but (fortunately for Pérouse) Boelcke was not at the rendezvous.

official Australian war history, may be quoted as exemplifying the spirit in which the air operations were waged. On 8 July, 1917, the Australian flying officer, Lieut. C. H. Vautin, was driven down near Gaza and captured, another officer, Capt. C. A. Brookes, being killed in the same air combat. Two days later, Lieut. Felmy, of the German air service, sent an aeroplane message to say that Brookes had been killed and buried with military honours, and that Vautin was quite well and hoped his kit would be sent to him. Letters from Vautin and photographs of Vautin and Felmy, taken together, were enclosed in the dropped bag. On receipt of this message, Capt. Murray Jones of the Australian air service flew to the German aerodrome at Huj with Vautin's kit and home letters, and dropped them from a height of fifty feet; he was in no way molested by the Germans, who, indeed, waved their hands to him, a salutation which he returned.

"The incident," says the official historian, "affords a pleasing picture of the knightly fashion in which airmen frequently treated each other between determined duels."¹

Challenges and messages.—Sometimes the challenge to a duel was accompanied by messages of a sportive or chaffing nature which would, no doubt, have struck the medieval knights as irregular in the extreme.

Oberleutnant Schütz tells how, when the German pilots at Baghdad received a new machine of the type of the British R.E. biplane, the appearance of the new-comer was greeted by the British airmen with a note in which they congratulated the Germans on their new "bird" and dropped some spare parts for it, "which you will very soon need." On another day, says Schütz, the English pilots invited the Germans to come and have a cup of tea with them in a "neutral" landing-ground, but this invitation the German pilots did not accept. They knew, however, says Schütz, that, for all this friendliness, the Englishmen would fight none the less keenly in action.

Schütz gives in English a copy of a message which was dropped by an English pilot after Schütz had returned from Germany to Iraq in April, 1917, with some new machines:—

"The British airmen send their compliments to Captain S. [Schütz] and are pleased to welcome him back to Mesopotamia. We shall be

¹ F. M. Cutlack, *The Australian Flying Corps* (vol. viii. *Official History of Australia in the War of 1914-18*), 1923, p. 72. A letter of 14 July, 1917, from Felmy to the Australian airmen, beginning "All dear sports," and worded in the quaintest but most friendly terms, is given at the same page, in facsimile.

pleased to offer him a warm reception in the air. We enclose a tin of English cigarettes, and will send him a Baghdad melon when they are in season. *Au revoir*. Our compliments to the other German airmen. The Royal Flying Corps."¹

One sees the British side of the question in the statement of Lieut.-Col. Tennant, who was serving in the Royal Flying Corps at this time in Mesopotamia, that Schütz (whose account is given above) "was a fine fighter and a gentleman. Sometimes he would drop a note on the aerodrome; he asked us to send over the *Sketch* and the *Bystander*, and stated that they were tired of the records captured with a gramophone at Kut, would we send them some new ones, especially 'Tipperary'; in return for this they would drop us fresh vegetables from Baghdad."²

Lieut. Henkelburg tells how, in the operations on the Palestine front, an English airman flew over a Turkish outpost and dropped a wallet, weighted with sand, containing a letter addressed to the Officer Commanding the Sinai flight. Inside was the following message, typewritten:—

"The Royal Flying Corps send greetings to their brave opponents who were hit yesterday in the air fight over Salamana."

The German airmen at first decided to drop a reply over the English lines, but gave up the idea again on reflecting that, as they were on the eve of such fierce and continuous fighting in the air, any such friendly correspondence would be out of keeping.³

The Russo-Austrian interchanges.—The messages exchanged before the first fall of Przemyśl between the Russian and Austrian air forces were particularly courteous and friendly, almost (one would think) to the point of indiscretion, and this at a time (early in 1915) when feeling was otherwise bitter on the Russo-Austrian front. One finds in the notes dropped such expressions as these: "... We also send a friendly-foemanly request that you will give us news of our airman, Lieut. —." "... "My hearty thanks for your letter, which I have just got. I am sorry that I have not had time to drop on you a photograph of the machine of Lieut. —. ... With best greeting, your ever devoted enemy, August, Baron von

¹ Schütz, in Neumann, *Die deutschen Luftstreitkräfte im Weltkriege*, 1920, pp. 540, 541, 543.

² Lieut.-Col. J. E. Tennant, *In the Clouds above Baghdad*, p. 49.

³ Hans Henkelburg, *Als Kampfflieger am Suezkanal*, 1917, p. 86. See, for air challenges dropped in Palestine, Capt. O. Teichmann, *Diary of a Yeomanry M.O.*, 1921, p. 154.

Mandelstob" [of the Austrian air service]. . . . "Our hearty thanks for yesterday's note which dropped straight on our aerodrome." . . . "We beg you friendly-foemanly to drop on our aerodrome news of these officers." . . . "Many thanks for your last lines about the loss of our *Albatross*. I am sorry to say that we have not for some time had the honour of seeing Russian airmen among us on the ground." . . . "A happy Easter. Many thanks for yesterday's letter. . . . Best greeting and Easter wishes to all the gentlemen of the — [Austrian] section of aviators. The Russian Flyers." The last letter was dropped on the Austrian aerodrome, and also on the same day an Easter egg and a large box of Russian cigarettes. On Easter Sunday an enormous Easter egg, with the inscription in Russian, "Christ is risen," was dropped from an aeroplane and, having a parachute attached to it, fell slowly on the Austrian lines.¹

Chivalrous tributes to the dead.—It was especially in the paying of respect to the gallant enemy dead that the high courtesy prevailing between the opposing air services displayed itself. This question is dealt with more fully by the writer in a later chapter,² but some mention may here be made of the customs which prevailed as showing the spirit of chivalry manifested. M. Mortane observes, *à propos* of the action of the British pilots in dropping a wreath on the place where Immelmann had been brought down by Waller, the observer in the machine piloted by MacCubbin (18 June, 1916) :—

"This gesture, frequent in aviation, shows the courtesy prevalent between the aviators. It is only fair to recognise that from this point of view the enemy are less odious than in their other relations with us. They never fail to drop messages from the air telling that such or such a pilot has been killed or captured, and sometimes they drop letters from the prisoners themselves."³

Chivalrous treatment of captives.—It was not to the dead only that compliments were paid. Pilots brought down in the enemy's lines were almost invariably treated with consideration and courtesy, at any rate by the *personnel* of the aviation service which captured them.⁴ Lieut. A. M. Sutherland was

¹ Bernard Pares, *Day by Day with the Russian Army*, 1915, pp. 168-71, where the messages are quoted in full.

² See chapter xiv.

³ J. Mortane in *La Guerre aérienne*, 28 December, 1916, p. 112. See also H. Perry Robinson, *The Turning Point*, 1917, p. 113.

⁴ Referring to a letter of 8 August, 1916, from Capt. T. Chaloner, R.F.C., a prisoner of war in Bavaria, an editorial note in *Flight*, 26 October, 1916, states : "Once again it emerges that there is a distinct sympathy between the Flying services of friend and foe of both sides."

thanked by the pilot who forced him down "for one of the best fights I ever had in the air."¹ When Lieut. R. J. Slade was brought down by Immelmann, he was treated with such courtesy by his victor, who landed beside him to help him, that Slade could write to his father: "Immelmann is a gentleman, and if ever we capture him I hope he will be treated the same."² Immelmann himself has left it on record, in a letter dated 3 August, 1915, how he wounded in an air fight an English pilot, William Reid, then landed beside him, and bound up his wounded arm, after a courteous passage of words between victor and victim. The incident, says M. Mortane, was typical of one whom his English opponents "always regarded as a gentleman"; and Immelmann put the finishing touch to it by at once setting out to drop a message, in the English lines, telling of Reid's fate.³

The spirit of the air.—"At the risk of incensing some of your eat-'em-alive civilian friends," wrote Capt. Alan Bott, "I may say we have plenty of evidence that the German Flying Corps includes many gentlemen."⁴

When the German pilot, Lieut. Keller, was brought down by the famous French pilot, Gilbert, on 10 January, 1915, Gilbert gave his photograph to his victim and with it the written "passport": "Memorable souvenir of an air combat. I beg French officers to treat kindly Lieut. Keller, who was a gallant foe before he became a prisoner."⁵

Clearly there was justification for the words which Sir (then Mr.) Philip Gibbs used in the *Daily Telegraph* of 15 November, 1915:—

"Although there is no mercy shown during these acrid combats, the battle of the air is enlivened by some of those little touches of chivalry and gallant humour which belonged to old-fashioned warfare."

Again, he wrote in the same paper on 20 April, 1917, that on the western front our young airmen fought

"in the same spirit as the young gentlemen of England rode out with Lord Chandos and Sir Walter Manny to seek combat with the French knights 600 years ago along the roads where our modern men-at-arms go marching to-day."

¹ Letter of Lieut. Sutherland quoted in *Flight*, 12 July, 1917.

² Letter from Lieut. Slade, quoted in *Daily Mail*, 10 April, 1916; see also *The Aeroplane*, 15 December, 1915, and *La Guerre aérienne*, 4 July, 1918, p. 551.

³ Immelmann, *Meine Kampfzüge*, 1917, pp. 63-4; see also *La Guerre aérienne*, 30 January, 1919, pp. 79-80.

⁴ "Contact" (Capt. A. Bott), *An Airman's Outings*, p. 237.

⁵ Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 73.

Another brilliant war correspondent has stated that "the rancour of the fight on the earth is shaken off from the wings of the aeroplane."¹

Chivalry of the German airmen.—"The Hun's nature," said yet another, "seems to improve with the element he frequents—most gross on earth, less gross at sea, least gross in the air."² A British flying officer wrote :—

"There is no getting away from the fact that the German Flying Corps was the only branch of any of their services that behaved at all like men, or had a spark of chivalry left in them. I have in mind the times they used to come over our lines to drop particulars of our missing airmen, letting us know whether they were dead, wounded, or prisoners, and in many cases going to a lot of trouble and into those details which made just all the difference to those suffering at home. My brother, who transferred from the Deccan Horse, and his companion, Lieut. Gordon Smith, were shot down over Bruges in 1915, and not only did the Germans soon after drop full particulars, including the location of the grave, but they also sent later a photograph of the spot, showing a tombstone ingeniously made from parts of the damaged machine."³

Capt. Wedgwood Benn, after describing how the British and Austrian flying officers kept one another informed of the fate of enemy airmen who were brought down, says :—

"May I point out to super-patriots who had no time to go to the war, being busy nosing out traitors at home, or Titus Oatesing helpless aliens into the police courts, that the modest survival we fostered of the ancient ways of chivalry did nothing whatever to diminish the ardour of our men. On the contrary, they were keener than ever, and to entertain an Austrian prisoner in the mess one night only appeared to add to the zest with which the hunters would start at dawn and scour the skies for miles beyond the lines."⁴

An American pilot in the French service ascribes the chivalry of the German airmen to the refining effect of the element in which they fought :—

"It is natural that the chivalric spirit should be strong. Even the Boche, treacherous and brutal in all other fighting, has felt its influence, and battles in the air with sportsmanship and fairness. He does not quite maintain the standards of the Allied pilots—of that more later—but he shows unmistakably that he is doing the best that his *Kultur* will permit. . . . There is mutual respect and exchange of civilities, much as there was between opposing knights. This is most frequently

¹ Beach Thomas, quoted in *Flight*, 7 May, 1915.

² Edmund Candler, dispatch from Mesopotamia, 28 October, 1916, in *Daily Mail*, 19 December, 1916.

³ Capt. A. C. Reid, *Planes and Personalities*, 1920, p. 139.

⁴ Wedgwood Benn, *In the Side Shows*, 1919, p. 248.

shown in the honour accorded to the dead, and also by the fact that no German pilot would disturb the funeral of a French aviator."¹

"In spite of their bombardment of open towns," wrote another American Volunteer in the French aviation, "and the use of explosive bullets in their aerial machine-guns, the Boches have shown up in a better light in aviation than in any other arm."²

"I think I am right in saying," says an American citizen who was shot down and captured while serving as an officer in the British Flying Corps, "that the only chivalry in this war on the German side of the trenches has been displayed by the officers of the German Flying Corps, which comprises the pick of Germany."³

Lord French, after relating an incident of the Boer War in which he and General Beyers, as opposing commanders, succeeded in exchanging courtesies in the midst of a campaign, states:—

"It is satisfactory to know that some such kindly and chivalrous spirit has at least made itself felt at times between the opposing flying services in the present war, for I have heard authentic stories which go to show that this has been the case."⁴

"Only among the aviators of the fighting armies," wrote a neutral correspondent who had spoken to the German flying officers, "is one certain to find that chivalry which once was never dissociated from war. Theirs is the special heritage of preserving the knightly tradition. The extraordinary bitterness of the other arms of the service makes the contrast all the sharper."⁵

Another American writer, whose experiences had been among the Allied troops, wrote:—

"It has repeatedly been said that in this war the spirit of chivalry does not exist, and, so far as the land forces are concerned, this is largely true. But chivalry still exists among the fighters of the air."⁶

"There is a freemasonry of the air," says another war correspondent. "Some kind of affinity seems to exist between those who have taken to themselves wings to explore the vastness of space. It has survived the snapping of all the other ties that once united us with our present foe. German airmen who rejoice in the slaughter of civilians from the skies show themselves of punctilious chivalry towards their foemen in space. . . . The Royal Flying Corps on its side is equally courteous."⁷

Rivalry in chivalric gestures.—Elsewhere the writer shows how the British Flying Corps, disregarding proudly the un-

¹ Lieut. B. A. Molter, *Knights of the Air*, 1918, p. 21.

² J. R. McConnell, *Flying for France*, 1917, p. 88. McConnell was killed later.

³ Lieut. Pat O'Brien, *Outwitting the Hun*, 1918, p. 35.

⁴ Lord French, 1914, 1919, p. 340.

⁵ H. B. Swope, *Inside the German Empire*, 1917, p. 185.

⁶ E. Alexander Powell, *Vive la France*, 1916, p. 212.

⁷ G. V. Williams, *With our Army in Flanders*, 1915, p. 332.

generous taunts of a section of the non-combatant public, buried with military honours the crews of the German airships brought down near London.¹ The pendant to this picture is to be seen in the splendid gesture of the German pilot who, flying through anti-aircraft shell-bursts and eluding two attacks in the air, came to drop a message of condolence in the British Residency, Baghdad, two days after General Maude's funeral.²

It was no compromise between truth and politeness but simply the plain fact that inspired the reference of Professor Boelcke, in thanking the British flying officers in captivity at Osnabrück for a wreath sent to his son's funeral, to "the chivalrous relations which have ever existed between German and British aviators."³

Monetary rewards and the spirit of the air.—At one time there appeared to be some danger that the ugly spirit of the market-place might invade the realm of romance and chivalry in which the airmen fought. The merchants of various countries bethought them of offering money rewards for the special achievements of their national air champions. Now it must be made plain that there is nothing contrary to international law in the offer or acceptance of such rewards, provided always they do not encourage some infringement of the laws of war, such as the treacherous assassination or the poisoning of an enemy. It is no concern of the laws of warfare if a rich citizen of Berlin or Hamburg offers a monetary reward to the first airship crew to bomb London,⁴ or Dover ;⁵ if a French merchant offers a prize of one million francs for the most heroic air feats of the war ;⁶ if English plutocrats give large sums for the destruction of enemy airships in England ;⁷ if the merchants of the Tuscan Riviera promise £3000 as prize money to anyone destroying an enemy aircraft or submarine on that coast.⁸ Nor is

¹ See p. 319.

² See *Flight*, 7 February, 1918, where a letter, telling of the incident, from a member of the Mesopotamian Expeditionary Force is quoted.

³ Letter quoted in *The Aeroplane*, 20 December, 1916. See also F. A. Collins, *The Air Man*, 1917, pp. 204-19.

⁴ See *The Aeroplane*, 30 September, 1914, quoting from the *Lokalanzeiger*, 17 September, 1914.

⁵ *Flight*, 29 January, 1915, quoting from *Hamburger Nachrichten*.

⁶ *Ibid.*, 14 August, 1914, referring to the offer of M. Michelin.

⁷ Mr. Joseph Cowen, of Newcastle, gave £2000 for such a purpose ; Lord Michelham, £1000 ; Sir C. Wakefield, Mr. W. Bow, and Mr. L. A. Oldfield, £500 each ; and other smaller sums were offered. See *Flight*, 11 May, 1916, and 14 September, 1916 ; *The Aeroplane*, 7 July, 1915.

⁸ See *ibid.*, 26 July, 1916.

it forbidden by the laws of war to "set a price upon an enemy's head," provided again the slaying of him in fair fight is intended. The stories, quite unfounded, which were prevalent in Germany, France, and England, of the offer of special rewards to the airmen who should succeed in killing or capturing the elder Richthofen,¹ the great French bombing pilot, Commandant Happe,² and Commander Samson,³ respectively, may have been intended to be accusations that, by making such offers, the enemy had violated international law; but, if they were, they simply showed that their inventors did not understand the war rights of the matter. Yet one feels that it would be an infinite pity if the high calling of the fighting airmen were to be sullied by the admission that its glories can be fittingly paid for in a rich man's surplus cash, or by a special monetary reward. It was a relief to all friends of aviation when, after the Cuffley airship incident, an Army Order was issued in this country forbidding officers and other ranks to accept money presents from "public bodies or private individuals in recognition of services rendered in the performance of their duties."⁴ The case of naval "prize money" is entirely different, and no objection of the same kind can arise to the participation of air *personnel* in the Government grants given under that name for successful operations against enemy ships.⁵

The avenging of fallen comrades.—Far more potent an influence than any expectation of reward was the desire of the airmen to avenge a friend fallen in battle. Again and again, as one reads of the ebb and flow of success and defeat in the air fighting, of the victor of yesterday himself brought low to-day, one is reminded of the ancient conflicts of the champions of

¹ See *The Aeroplane*, 18 July, 1917, quoting the Wolff Bureau *canard*; and *La Guerre aérienne*, 17 October, 1918, p. 790.

² See *La Guerre aérienne*, 31 May, 1917, p. 458; D. Vincent, *La Bataille de l'Air*, 1918, p. 54.

³ Lafon, *Les Armées aériennes modernes*, 1916, p. 239.

⁴ See Army Order of 16 October, 1916, adding a new para. (443a) to the *King's Regulations for the Army*.

⁵ It was decided by the President, Sir Samuel Evans, in the Prize Court, on 2 July, 1917, that the airmen who took part in the destruction of the "Konigsberg" in the Rufgi River were entitled to share in the prize bounty given for that operation. A special kind of "prize money" was given to members of the Lafayette Squadron. Major C. J. Biddle writes under date of 7 January, 1918: "I got five hundred francs prize money from the Franco-American Flying Corps for my first Hun. It seems rather poor sport getting money for killing people—too much like shooting for the market. It is, however, only a special sort of pay when you come down to it" (*The Way of the Eagle*, 1919, p. 138). Rewards were given in the Turkish service for the bringing down of a British aircraft; e.g. L.T. 40 to an airman who brought one down, L.T. 30 to a company of infantry that did so (F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 120).

chivalry. Guynemer kills a host of Teutonic champions before he is killed by Wissemann; Fonck sallies forth and kills Wissemann. Immelmann kills Savage and is himself at once shot down by the aircraft piloted by MacCubbin, destined soon to be killed in his turn. Ronserail kills Kandulsky, who had killed Pégoud, but Ronserail, too, has no armour against fate. Boillot is killed and that same day Navarre, his friend, avenges his death. Rhys-Davids, destroyer of those great fighters, Voss-Crefeld and Schäfer,¹ is killed by an unknown opponent; and Rhys-Davids, be it noted, is in the true line of succession from the scholar-knights of the Middle Ages, for, splendid fighter that he was, he "hated fighting, hated flying, loved books, and was terribly anxious for the war to be over, so that he could get to Oxford."² The combats, too, are epic in their quality of personal encounters. Only in those wars in heaven of which Milton sang will one find the counterpart of such a duel as that in which the elder von Richthofen and Lanoe Hawker followed one another down, manœuvring and shooting, from 10,000 to 300 feet, on 23 November, 1916.³ There is something archaic, too, in the salutations with which the opposing airmen sometimes parted after a long and indecisive contest. Raoul Lufbery tells how he waved his hand to a German pilot, who returned the salutation, after such a fight.⁴ "We flew side by side laughing at each other," says Albert Ball, describing a long combat in which he and his opponent had exhausted their ammunition, "and then we waved adieu to each other. He was a real sport, was that Hun."⁵ It may have been youth and high spirits that inspired the gestures, yet they are not unimportant as evidence of the spirit in which the war in the air was waged, and it is that spirit which shapes the usages of war.

The individual champions.—Some other features of the air combats served to emphasise their analogy with the old tournaments of the knights. As already explained, the airmen bore upon their machines in many cases special marks or insignia which

¹ Voss-Crefeld had forty-nine and Schäfer thirty victories to his credit (*La Guerre aérienne*, 8 August, 1918, p. 629).

² Sir W. Orpen, *An Onlooker in France*, 1921, p. 50, where a fine picture of Rhys-Davids may be seen: "A fine lad," says Orpen, "with a far-seeing clear eye. . . . He had been captain of Eton the year before, so he was an all-round chap, and must have been a magnificent pilot."

³ See the description of the fight in Richthofen, *Der rote Kampfflieger*, 1917, pp. 103-5.

⁴ See *La Guerre aérienne*, 4 April, 1918, p. 332.

⁵ Briscoe and Stannard, *Captain Ball, V.C.*, p. 213.

enabled them to be personally identified in action. The individualism of the air fighting was further marked by the publicity given generally to the exploits of the most successful airmen. The continental practice was to name in the official reports the particular pilots or observers who had brought down a certain number—usually five—of enemy machines or balloons. The champions of air warfare were thus known to the world. In the British air force, indeed, the rule of anonymity prevailed. Only when a great air fighter was killed, and not always even then, was this rule broken. When Albert Ball fell in action, when J. T. B. McCudden was killed accidentally, the public were allowed to hear of their achievements; yet E. Mannock, R. A. Little, and R. S. Dallas, who had brought down fifty-eight, forty-seven, and thirty-nine enemy aircraft respectively, were killed in action without any similar recognition. Fame was equally partial to the living. The Canadian "Ace," W. A. Bishop, became famous, and rightly so, for he headed the whole British list, with seventy-two enemy machines destroyed. But of the other great fighters, whose victories varied from over fifty to about thirty in descending scale—R. Collishaw, G. E. H. McElroy, D. R. MacLaren, P. F. Fullard, A. W. Beauchamp-Proctor, W. G. Barker, J. Gilmour, T. F. Hazell, W. G. Claxton, J. I. T. Jones—the world heard nothing whatever. Had these officers served in the French or German air forces their names would have been household words, like those of Fonck, Nungesser, Guynemer, Navarre, Madon and their great comrades among the French "Aces," or Immelmann, Boelcke, the Richthofens, Voss, Löwenhardt, Bongartz, Gontermann, Wolff, Schäfer, von Tutschek, in Germany. The British system of concealing the "Aces'" names would have been more logical if it had been consistently followed, but it was not. In the awards of decorations the number of machines which each officer had brought down was stated, either as a whole or since a former award, and anyone who took the trouble to read the *Gazette* (which, however, no one ever does) could have found the required information there.¹

Chivalry and unequal combats.—Chivalry is largely the application to the conduct of war of those principles of fair play and sportsmanship which should govern all contests, whether in war or peace, but it does not follow that these

¹ As regards the policy of anonymity, see H. Perry Robinson, *The Turning Point*, 1917, pp. 113-14.

commendable principles can, or should, be allowed to outweigh in the last resort the consideration that the purpose of fighting is to destroy your enemy or at least to render him powerless. There was sometimes a tendency to forget this truth in the air warfare of 1914-18. One meets with the expression of views which display a misconception of the end and nature of war. The fact that the enemy airmen sometimes attacked in greatly superior numbers the aircraft of the other side or that a body of them fell upon a single machine, was sometimes made the cause for complaint. Thus one finds the complaint made that a French pilot, Sous-lieut. C. Béranger, was killed in a combat (on 31 May, 1918) with twelve enemy machines, who attacked him when he was quite unsupported;¹ and that another French pilot, Maréchal des logis Deshoulières, was "literally assassinated" when four German airmen fell upon him on 6 September, 1917.² Guynemer was blamed in Germany, Richthofen in France, for preferring to attack isolated machines.³ Richthofen's "Tangos"—part of the famous "circus"—were said to operate *lâchement* in "letting a strong formation pass, even if it is inferior in number, and falling, seven or eight to one, on stragglers."⁴ Even Bishop refers disparagingly to the German "head hunters" who waited at great heights to pounce upon a straggler or other Allied machine struggling, in a damaged condition, to reach home, and calls the airmen who did so "bad sportsmen."⁵ "Bad sportsmen" they may have been, but men must often do in war what they would not do in the contests of peace. "Perhaps the whole crew of dare-devils has been decorated," writes Corporal Drew, of the Lafayette Squadron, sardonically, of an attack upon him by a number of German aircraft. "However, no unseemly sarcasm. We would pounce on a lonely Hun just as quickly. There is no chivalry in war in these modern days."⁶

Attack in superior strength entirely legitimate.—Any fighting squadron, however chivalrous, should, and would,

¹ See *La Guerre aérienne*, 16 January, 1919, p. 45.

² The statement was made by Gobert, the famous tennis-player, then an officer in the French aviation (see *La Guerre aérienne*, 6 December, 1917, p. 53).

³ See *La Guerre aérienne*, 18 July, 1918, p. 571, quoting *Die Woche*, of 6 October, 1917; *ibid.*, 13 June, 1918, p. 492, quoting the *Badische Presse* of 8 August, 1917; Udet, *Kreuz wider Kokarde*, 1918, p. 66; "Flight," *The Flying Yankee*, 1918, p. 125; "Flight Commander," *Cavalry of the Air*, 1918, pp. 214-15.

⁴ Jean Bernard in *La Guerre aérienne*, 25 April, 1918, p. 383.

⁵ W. A. Bishop, *Winged Warfare*, p. 34.

⁶ See Drew's letter from hospital, quoted in J. N. Hall, *High Adventure*, 1918, p. 167.

pounce upon a single enemy aircraft if they did their duty. War is, after all, to a great extent simply the art of taking an opponent at a disadvantage. Great masters of the art, like Napoleon and Stonewall Jackson, were great largely because they knew how to concentrate superior numbers against an unsuspecting enemy. "There is, unfortunately," says Noble, almost reproducing Drew's words, "no chivalry of the air which forbids the bagging of a single machine by three or four should the fortune of war deliver a 'lame duck' into their hands."¹ Speaking of the French *vol de groupe* or formation flying, Major C. J. Biddle (U.S. Aviation) says:—

"The idea seems to be to try to find one machine by itself or to manœuvre one of a group until it is out of touch with its fellows, and then the whole gang jumps on the one unfortunate 'isolé.' Hardly seems a square deal, but after all the aim is to put as many of the other fellow's machines out of business as possible."²

Not only Dorme, who was a son of Lorraine and filled with hatred of the Germans, upheld the principle that single machines should be surprised and destroyed. In a letter of April, 1917, he tells how he shot down "a pretty little two-seater which was tranquilly going home after a reconnaissance. I assassinated it in cold blood, by surprise, giving it ten bullets in the back from a distance of less than 10 metres, under its tail. Que le diable ait son âme!"³ Fonck was less bitter a foe, yet he, too, states that he regarded it as a special task to prevent observation by the enemy's aircraft. "I have never distinguished between fighting, artillery, and photographic machines—all are good to destroy."⁴ Guynemer took a similar view. M. Farré records a conversation with him in which he spoke of its being "simply murder" for the fast chaser aeroplanes to bring down the "poor old observation planes," but added that in view of the consequences of the observation to the artillery and infantry it was necessary to repress one's natural repugnance to engaging in such unequal combats and attack the slower planes with all one's strength.⁵ In still more explicit and entirely correct terms the French pilot whose diary has been reproduced in the *Notes d'un Pilote disparu* found it necessary to denounce as a "ridiculous assertion" the charge, which

¹ Lieut. W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 147.

² C. J. Biddle, *The Way of the Eagle*, 1919, p. 27.

³ Letter of Dorme, quoted *La Guerre aérienne*, 20 June, 1918, p. 519.

⁴ Fonck, *Mes Combats*, 1920, p. 156.

⁵ H. Farré, *Sky Fighters of France*, p. 122.

was apparently made by some of his comrades, that "the German pilots are cowards because they try to bring many against one and to secure victory by concentrating in superior numbers against an isolated and distracted individual. That," he says, "is *très bonne guerre*. . . . It is our strict duty to try to destroy the maximum number of enemies with the minimum of loss and we ought to employ more freely the methods of Boelcke and Richthofen."¹

Attack on disabled machines.—The same mistaken notion of chivalry which expressed itself in the view here denounced is to be found again in the disinclination sometimes felt to continue to attack an already disabled aircraft. It is true that the laws of war forbid the wounding or killing of an enemy who has no longer the means of defence, but that prohibition is subject to the important qualification that the enemy in question *has surrendered at discretion*.² To cease to fire upon an enemy airman whose engine has "stalled" or whose machine-gun has jammed may be high chivalry, but it is not an obligation under the rules of war. One may admire the spirit displayed by Rickenbacker, the American "Ace," and by the British pilot in the following incidents, but one must add that in acting as they did they went altogether beyond anything that international law can legitimately require. Rickenbacker quotes his diary of 10 March, 1918:—

"Resolved to-day that hereafter I will never shoot at a Hun who is at a disadvantage, regardless of what he would do if he were in my position."

In accordance with this chivalrous vow, he refrained from shooting down a Fokker pilot whose engine "stalled" in a combat at 10,000 feet on 27 October, 1918, with the result that the propeller stood absolutely still; Rickenbacker compelled the German pilot to glide before him towards the American lines and would have succeeded in capturing pilot and machine intact if a third pilot—an American or Frenchman—had not intervened and attacked the Fokker, causing it to crash. The German pilot was not, however, injured in the crash and was made prisoner.³ (Some other cases of the "shepherding" of airmen into the attacker's lines are referred to later in this chapter.)⁴ The other incident, in which a British pilot was

¹ Lieut. Marc, *Notes d'un Pilote disparu*, 1918, p. 165.

² Hague Land Warfare Regulations, Art. 23 (c).

³ Capt. E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, pp. 338-41.

⁴ See pp. 122-3.

concerned, is thus described by Count Czernin in his diary under date of 2 February, 1918:—

"Richthofen the younger and an Englishman were circling round each other and firing like mad at each other. They were getting closer and closer, and already they could distinguish each other's features. Suddenly something jammed in Richthofen's machine-gun and he could not fire any more. The Englishman looked wonderingly across, and when he realised what was the matter with Richthofen he waved his hand, turned round and flew off. Fair play! I should like to meet this Englishman and tell him that, in my eyes, he is greater than the heroes of old."¹

Cessation of attack unnecessary.—A British officer, Capt. G. H. P. Whitfield, shot down and captured on 8 August, 1918, wrote home:—

"I must say the pilot of the German machine was a sportsman, for he stopped firing when he saw we were out of control."²

The German "Ace," Udet, relates how once, when his engine was hit in an air combat, his opponent was *sehr anständig* ("very decent") and refrained from attacking, merely flying with Udet to the front lines and then turning back towards home.³ In both these cases there was no obligation to cease fire. It cannot be certain that the apparent fall out of control is not a ruse to escape. It is recorded that when the German airship L 49 was brought down in France on 20 October, 1917, it displayed in its descent a white flag and the French airmen thereupon ceased to attack it.⁴ No doubt in this case the attacking airmen could cease fire in the knowledge that the airship was certain to be captured and that if it attempted to rise or escape they could at once destroy it. In enemy territory, however, they would have been fully justified in disregarding the sign of surrender. Normally to accept surrender in the air is quite impossible. Boelcke tells in a letter of 6 July, 1915, how, after a long fight with a French two-seater, the observer in the French machine made "a typical gesture with his hands, as if meaning to say: 'Leave us, we are beaten, we surrender.'

¹ Count Ottokar Czernin, *In the World War*, Eng. trans., 1919, pp. 246-7.

² Quoted in C. C. Turner, *The Struggle in the Air, 1914-18*, p. 118.

³ Udet, *Kreuz wider Kokarde*, 1918, p. 68. Von Tutschek (*Stürme und Luftsiege*, 1918, pp. 111, 157) describes two instances in which he ceased to fire upon enemy aircraft going down out of control; in one of them, he only fired once, when the enemy pilot tried to turn to his front.

⁴ Report of Lieut. Lefèvre, commanding Esc. No. 152, quoted in *La Guerre aérienne*, 22 November, 1917, p. 23.

But," says Boelcke, "who could trust an enemy in the air in such circumstances?"¹ M. Mortane stigmatises Boelcke's view as cruel and savage, for the French machine was descending in the German lines.² Yet one cannot condemn Boelcke; the gesture, the descent may have been a ruse to escape, and it was Boelcke's duty in the circumstances to continue to attack. An American pilot, writing of his attack upon a German two-seater, the observer in which he had shot, says:—

"After that it was cold-blooded murder for me to shoot the pilot down; but I did it all the same, and he continued his dive into the trees."³

"Cold-blooded murder" it certainly was not; it was simply war, which is, and must be, cruel.

Giving of quarter impracticable.—"In aviation," says Fonck, quite truly, "there is most often no alternative but victory or death, and it is rarely possible to give quarter without betraying the interests of one's country."⁴ "It is a life or death struggle," says von Tutschek, the great German air fighter; "you cannot surrender by holding up your hands as on land, and the man who is beaten or who hesitates is machine-gunned until he is set on fire or falls."⁵ A clearly disabled aircraft may still show fight. The French pilot, Sergeant Pierre Steuer, was killed on 24 August, 1916, by the observer of a German Aviatik whose pilot Steuer had already mortally wounded and which was falling to the ground when the second fatal shot was fired.⁶ The crew of the airship which was brought down in flames in the North Sea by Flight-Lieut. Cadbury and Flight-Sub-Lieut. Pulling, R.N.A.S., on 27-28 November, 1916, are stated to have continued to fire upon the

¹ Boelcke, *Feldberichte*, 1916, p. 38. Boelcke records another case in which, when attacking a Voisin biplane near Douaumont, on 13 March, 1916, he saw the observer climb out of his seat and sit down on the left wing, waving his hand to his opponent. "It was a piteous sight and I hesitated for a moment before firing upon him. He was completely defenceless. I had cut an elevator and the machine was falling. To bring it back into the line of flight, the observer had got out to sit on the wing in order to restore the equilibrium. However, I still fired a few shots at the pilot in order to bring them down definitely, when I was attacked by a second Frenchman who came to his comrade's aid." Boelcke broke off the fight with his new opponent; the Voisin crashed in front of the German position (*op. cit.*, p. 64).

² *La Guerre aérienne*, 16 January, 1919, p. 47.

³ Hall and Nordhoff, *New England Aviators*, ii. 266.

⁴ Fonck, *Mes Combats*, 1920, p. 133.

⁵ Von Tutschek, quoted in *La Guerre aérienne*, 18 April, 1918, p. 372.

⁶ *La Guerre aérienne*, 16 August, 1917, p. 628.

latter as he dived to avoid the flaming débris.¹ According to a German message, Lieut. P. C. S. O'Longan, who was killed in an air combat on 1 June, 1917, fought to the last; when falling and only 200 metres from the ground, he turned his machine-gun upon the aircraft attacking him.² His act was as fine as that of a German pilot recorded by Guynemer, who, in the air combat in which he brought down his 38th victim, states that he killed the German pilot with his first bullets and was following the falling machine to register its crash, when suddenly he found himself in a hail of bullets from the German observer. "I must admit," he says, "that it was a fine act for that observer, knowing that he would soon be a mass of quivering bones and flesh crashed on the ground, to try to take with him to death the enemy who sent him there." It is possible, he adds, that the observer was unaware that his pilot was dead and that he may have thought the descent was only a manoeuvre; but one can see that he inclines to the other view and glories in even an opponent's splendid devotion to duty to the bitter end. It recalled to him the deed of Lieut. Floch and Sergeant Rode in hurling their blazing machine upon their Fokker conqueror.³

Richthofen describes how he spared an English airman whose machine seemed to be on fire and merely followed him down, landing near him. After they had landed, "the scoundrel (*der Schurke*) told me that he had tried to fire on me during my last 300 yards, but that his machine-gun had jammed. I give him quarter; he profits by it and rewards me afterwards by a treacherous shot."⁴

The sparing of machines in flames.—Such cases as those just quoted show the difficulty of sparing a disabled enemy in the air; and even if the case is one of a machine on fire, it cannot be held that the attacker is bound by any rule of war to cease firing upon it. To do so may be very ruthless—or, perhaps, very merciful—but does not constitute an infringement of any law or custom requiring that quarter be granted in such circumstances. Fonck stigmatises as cowards (*les lâches*!) the German airmen who pursued and continued to attack a comrade

¹ See article by "An Aeronautical Correspondent," in the *Daily Mail*, 1 January, 1919.

² See obituary notice of Lieut. O'Longan in *The Aeroplane*, 18 July, 1917.

³ The story by Guynemer himself is told in *La Guerre aérienne*, 13 June, 1918, p. 491, and is reproduced in Mortane, *Guynemer, the Ace of Aces*, Eng. trans., 1918, pp. 117-19. As regards the heroic feat of Floch and Rode, see later, p. 133.

⁴ Richthofen, *Der rote Kampfflieger*, pp. 108-9.

of his when falling in flames.¹ *The Times* correspondent on the western front wrote, on 8 May, 1917 :—

“ The unwritten laws of this marvellous game [air warfare] prescribe that no honourable fighter attacks an enemy in flames. Such an enemy is out of the fight, and has trouble enough for a brave man.”²

An editorial note in *The Aeroplane*, referring to this statement, says :—

“ The business is to kill the enemy, so there seems to be a flaw in the logic again.”³

One must regretfully admit that the comment is justified. Not only is it possible that the apparent fall of the machine on fire may be a *ruse*, for a smoke-producing device is sometimes fitted to aircraft, but it is also possible for a burning machine to land without serious injury to the occupants ;⁴ or the flames may be extinguished, as in a case recorded by Capt. E. V. Rickenbacker. Capt. Rickenbacker states that the machine of Lieut. Sumner Sewell of the 95th (American) Pursuit Squadron, was set on fire in September, 1918, by an incendiary bullet :—

“ Sumner instinctively put down his nose so that the flames would be swept by the wind to the rear and away from his person. Anybody but a Hun would have taken pity on a fellow being in such a plight, and would have turned away his eyes from so frightful a spectacle. But this Fokker Hun was built of sterner stuff. Instead of turning away to attack the rest of the 95 formation, Fritz stuck steadfastly on Sumner's tail, firing steadily at him as he descended ! ”

The German followed him from a height of almost three miles to little over a thousand feet from the ground, “ continuing his target practice with poor Sewell as his mark ” ; at last Sewell shook him off and then made the amazing discovery that the flames were extinguished. He crashed, and after extricating himself found that the German had shot one of his wheels completely away.⁵

There is one class of cases of a *prima facie* analogous nature in which special considerations arise, namely, those in which

¹ Fonck, *Mes Combats*, 1920, p. 19.

² *The Times*, 10 May, 1917.

³ *The Aeroplane*, 16 May, 1917.

⁴ A number of cases in which this happened in the great war are on record. It may also happen that the clouds of smoke pouring from an engine are due simply to over-oiling (see “ Flight Commander,” *Cavalry of the Air*, 1918, p. 152).

⁵ Rickenbacker, *Fighting the Flying Circus*, 1919, pp. 241-2.

an airman or observer descends by parachute from an aeroplane or observation balloon, either before or after it has been disabled. These cases are dealt with in a later part of this chapter.

Cases of surrender in the air.—Although normally, as already stated, it is impossible to accept surrender in the air, there are exceptional cases in which a pilot or several pilots have succeeded in "shepherding" an enemy aircraft whose pilot has given up the fight into the lines of the victorious side. Fonck "manœuvred" an enemy pilot into surrender in this way,¹ so did Guynemer;² so did Navarre;³ so did Lieut. Cowper of the R.F.C.;⁴ so did a French pilot called Leroux.⁵ Indeed, the instances of the capture of enemy machines in this way are fairly common. One was reported unofficially in February, 1918: a "small squadron" of Allied machines surrounded two German airmen near Ghent and forced them to fly obediently, in the middle of the Allied squadron, back to the British lines.⁶ At the end of May, 1918, a war correspondent wrote:—

"I have not heard before of an airman surrendering in the air. In a fight a day or two back the machine-gun of a German pilot jammed. He made an effort to repair it; then, being unsuccessful, he put up his hands. After that he dived, and our men followed him, supposing that he meant to land and give himself up. At the same time our pilot kept a sharp look-out for any dirty work on the German's part. No treachery was attempted, but in diving the enemy lost control of his machine and landed very badly. He was dead when his pursuer came upon the scene."⁷

Another case occurred on 9 June, 1918, when Lieuts. R. C. Armstrong and F. J. Mart, on an R.E. 8, drove an inexperienced German pilot, on a Halberstadt, to their own

¹ Fonck, *Mes Combats*, 1920, pp. 64-5.

² Mortane, *Guynemer, the Ace of Aces*, 1918, pp. 96-98, and H. Farré, *Sky Fighters of France*, 1919, p. 128; both quote Guynemer's own account of this incident.

³ Jean Navarre, *Mes Aventures guerrières et autres*, in *La Vie aérienne*, 31 July, 1919, p. 484.

⁴ See Illingworth, *History of 24 Squadron*, p. 31, giving the following extract from the diary of Major V. A. H. Robeson, M.C.: "26 February, 1918. . . . Lieut. Cowper also defeated a Pfalz and shepherded it to 52 Squadron's aerodrome close to Ham, where he landed intact and put up his hand, 'Kamerad,' as soon as he could jump out of the machine."

⁵ Lieut. Marc, *Notes d'un Pilote disparu*, p. 195.

⁶ *The Times*, 13 February, 1918, quoting from the *Telegraaf* of Amsterdam.

⁷ Hamilton Fyfe in *Daily Mail*, 25 May, 1918. Another case was reported by W. Beach Thomas on 12 August, 1918.

aerodrome and captured the machine intact. "Armstrong shepherded the Halberstadt towards Flesselles aerodrome like a dog working a lone wether," says the Australian official historian.¹ This case was recorded in the British official air *communiqué* of 10 June, 1918.

Lieut. Buddecke records a case in which, thinking an enemy aircraft was falling, he ceased fire and merely glided after it, when suddenly the enemy stalled his machine and began to fly forward. Buddecke then fired again and shot the machine down.²

A similar case occurred in Palestine on 15 October, 1917. Lieut. Steele, R.F.C., in a combat with a German Albatross, put his opponent's engine out of action, and the German pilot thereupon "signalled the Bristol fighter [Steele's machine] off and glided down as though to land. Steele stopped firing and flew earthwards alongside the Albatross, but noticed that the enemy was gliding towards the Turkish lines, and signalled him to turn back. The German declined to turn. Steele's observer accordingly re-opened fire and shot off one of the Albatross's wings, which finished the dispute." The German machine crashed.³

The instances in which pilots "made 'Kamerad'" in the air were infrequent as compared with the whole number of air combats that took place,⁴ and this is equally true of the deliberate surrender of pilots who had not been driven down. One exceptional case of the latter kind is recorded by Capt. E. V. Rickenbacker, who states that a few days before the armistice a German Halberstadt aeroplane landed at Colombey-les-Belles :—

"The two occupants climbed out of their machine and in pure New York patois informed the startled mechanics that they wished to make a bargain with them."

They were two Yiddish-Germans who had been in business in New York, had been caught in Germany by the outbreak of the war, had been thrust into military service, and had taken

¹ F. M. Cutlack, *The Australian Flying Corps*, 1923, pp. 269-70.

² Buddecke, *El Schahin*, 1918, p. 48. Another case is recorded by Lieut. Marc, *Notes d'un Pilote disparu*, p. 181.

³ F. M. Cutlack, *The Australian Flying Corps*, p. 76.

⁴ For cases in which pilots or observers are stated to have "made 'Kamerad'" by holding up their hands, see *La Guerre aérienne*, 28 December, 1917, p. 97, in which a photograph of a German observer in an aircraft raising his hands is given; *La Guerre aérienne*, 25 April, 1918, p. 389; *The Times*, 22 July, 1915.

to aviation with the object of surrendering on the first favourable opportunity. This only occurred when the war was practically over; they seized it, characteristically, to offer their machine, valued at not less than \$10,000, for their freedom.

"It was an attractive offer, but since they were already in our custody as prisoners and the machine was regarded as a capture, their conditions were respectfully declined."¹

Attack on crashed enemy airmen.—The question whether an airman who has brought down an enemy machine is entitled to continue to fire upon the pilot or observer of that machine while on the ground is another upon which there has been some misunderstanding. One British flying officer who brought down an enemy aeroplane behind the German lines, followed it down and flew over it, but, according to a statement by his commanding officer, "a German pilot got out of the crash and waved to him, so he could not shoot at him again. He therefore waved to him and started for home"; and on his way home, it may be added, was mortally wounded.² The gallant young officer concerned was needlessly merciful. Compare with his action that for which another British officer was awarded the Military Cross; this officer, according to the official statement, after driving a hostile machine down to its aerodrome, "dropped a bomb, completely obliterating the pilot, who had started to run away, and damaging his machine."³ Another officer and his gunner were decorated for firing upon and wounding one of the two occupants of a German machine after they had driven it to the ground.⁴ The *communiqué* issued by the British G.H.Q. in France on 5 May, 1916, records another case in which an enemy machine was wrecked "and the pilot of our aeroplane fired upon the occupants after landing [behind the German lines] and then returned safely to our lines."

Such attack legitimate in enemy ground.—It is, beyond question, perfectly legitimate for an airman to fire upon an opponent who has landed in enemy ground. The fact that the crashed airman holds up or waves his hands is immaterial; the attacker is justified under the laws of war in killing him.

¹ Rickenbacker, *Fighting the Flying Circus*, 1919, p. 329.

² See the commanding officer's letter quoted in *The Aeroplane*, 21 August, 1918.

³ See award of M.C. to Lieut. L. H. Browning, R.F.A. and R.A.F., in the *London Gazette*, 15 October, 1918.

⁴ Case of Lieut. G. S. M. Insall and Air-Mechanic Donald (see C. C. Turner, *The Struggle in the Air*, p. 51).

If a statement and an incident which one finds in an American pilot's book are to be read as referring to cases in which a machine is brought down in its occupants' territory, they cannot be supported. This pilot states :—

" Certain unwritten rules still apply among the Allied air forces, and it is not considered good sportsmanship to kill a defenceless opponent unless it is incidental to putting his plane out of commission. . . . Now, it is only fair to admit that in general the Boche plays the game by the same rules. Their airmen represent the best of a bad lot, but even among them the ' Hunnish ' manner of waging war crops out at times."

Lieut. Wellman proceeds to give an instance in which German pilots riddled the body of a French pilot *after* he had crashed to the ground—an instance, he states, of " the most inexcusable vindictive brutality." ¹ That would, perhaps, be true if the attacking pilots knew that their opponent was badly wounded or dead, but if the machine had crashed in their enemies' ground, they would be entitled to fire upon the occupants on the ground, and it is possible that in the case in question they did, without malice or brutality, only what they were justified in doing.

Attack on airmen crashed in attacker's ground—If, however, the aircraft comes down in ground held by the attacking airman's forces, and the occupants do not continue to resist nor try to escape, it is obviously unnecessary to kill them, for they must be captured in any event. There was, therefore, some justification for the protest which a French airman made against the action of a Bulgarian pilot in the following case. The French pilot, who was *Maréchal des logis* Rouable, was brought down in an air fight in Bulgaria on 30 September, 1916, through engine failure, and was followed by two enemy machines in his descent ; the pilot of one, the German *Feldwebel* Wagner, was " très correct " and " contented himself with seeing that the descent was not a feint to escape," but the other, a Bulgarian named Perkanow, continued to fire even when Rouable and his observer were trying to extricate themselves from the débris of their crashed machine.²

It is on record that a captured American pilot also made a vigorous protest to his captors on the ground that he was fired at after landing. The German airman who had fired upon him explained that he did so with the object of preventing the American pilot's escape, not of killing him, to which the other

¹ W. A. Wellman (Lafayette Flying Corps), *Go, Get 'Em*, 1918, pp. 185-7.

² *La Guerre aérienne*, 30 January, 1919, p. 77.

replied that the Americans would never sink so low as to fire on the enemy "when he was already down."¹ The fact that "a man is down," it should be added, has nothing to do with the matter. What is material is that he is "down" in a place in which he is certain to be captured and in which it is therefore needless brutality to kill him. So restricted, the American pilot's protest was justified.

Continuance of resistance by crashed airmen.—Wherever a pilot comes down, he may still be attacked if he, on his side, continues his resistance. The great Richthofen did not understand his war rights in this respect. He states in his book that he brought down an English airman by piercing his tank.

"After his landing I flew for a time over him at 10 metres' height to make sure whether I had killed him or not. *Was macht der Kerl?* He takes his machine-gun and riddles my whole machine. Voss told me later that if that had been done to him he would have shot the man dead on the ground at once. Strictly, I should have done so, for he had not actually given in."²

A case in which a crashed German pilot continued to fight is recorded in a letter from a gunner of the Royal Horse Artillery. After describing an air duel, he says:—

"His [the German pilot's] observer was killed by the machine-gun fire of the Englishman, and the pilot came right down, but he opened fire against a company of infantry who were rushing forward to capture him and prevent him setting fire to his machine. So, of course, they had to fire upon him."³

C. B. Nordhoff, the American pilot, records a case in which a German aeroplane came down in a crippled condition upon a French parade-ground, and the two occupants, refusing to surrender, turned their Spandau guns upon the French soldiers, who were reluctantly compelled to shoot the brave airmen.⁴

Burning of machine after a crash.—The resistance which justifies the killing of an airman who has come down on enemy ground need not necessarily take such forms as those referred

¹ Elmer Haslett, *Luck on the Wing*, p. 205.

² Richthofen, *Der rote Kampfflieger*, 1917, p. 126.

³ See letter quoted in *The Times*, 21 September, 1915. It was stated in a report from a neutral source that when Capt. Liefie Robinson was forced to descend near Douai in May, 1917, he continued to work his machine-gun from the ground against the German pilot, Festner, who had driven him down. He continued to resist until surrounded and captured by German soldiers (Central News telegram, Amsterdam, 8 May, 1917, quoted in *Evening News*, 8 May, 1917).

⁴ C. B. Nordhoff, *The Fledgling*, 1919, p. 49.

to in the preceding paragraph. A crashed airman must be regarded as continuing to resist if he tries to burn his machine.

"It is customary for a pilot, when driven down in the enemy's territory, to set fire to his machine, to prevent it from falling into the hands of his adversaries."¹

The destruction of machines in such circumstances was quite common. The first recorded case was in 1912, when Capt. Riccardo Moizo, after a forced landing in Tripoli, rendered his aeroplane unserviceable to prevent its falling into the hands of the Turks, by whom he was himself captured.² In the great war, British airmen who landed on the German side destroyed their machines so quickly that Boelcke surmised that "they probably have some system for destroying their aeroplanes immediately."³ The French airmen appear, at any rate on some occasions, to have been less expert in similar circumstances. In a report by the French official "Eye-witness," published in Paris on 7 January, 1915, a letter from a French flying officer who had a forced landing behind the German lines and was captured, with his companion, is quoted. In it he tells how he and his companion, on landing, tried to burn their machine and how the German soldiers who approached threatened to shoot them if they did so.

"Finally, my companion fired a shot with his rifle into the reservoir. Then there was a regular hail of bullets. I succeeded in lighting the petrol with my last match. I do not know how we escaped, as we were fired at at point-blank range."

German pilots were also under orders to burn their machines in the event of a forced landing in enemy ground. When a German two-seater was captured by the French at Nogent-l'Artaud on 24 April, 1918, and one of the occupants was proceeding to set fire to it, the French soldiers threatened to shoot the other occupant, who was the superior in rank, unless he ordered his subordinate to desist. The German officer did so,

¹ C. D. Winslow, *With the French Flying Corps*, 1917, p. 123.

² F. Savorgnan di Brazza, *La Guerra nel Cielo*, 1915, p. 27. Colonel R. Moizo, the hero of this incident, was a member of the Italian delegation to the Commission of Jurists at The Hague, 1922-23.

³ Boelcke, *Feldberichte*, p. 116. Towards the end of the war the German airmen appear to have carried on their machines a contrivance such as Boelcke mentions. Major C. J. Biddle (*The Way of the Eagle*, 1919, p. 249) states that in a captured German aeroplane a small, inconspicuous box, marked, "Beware. Danger of death," was found and proved to be an "infernal machine" for destroying the aircraft in the event of a forced landing in the enemy's lines.

after some hesitation; he explained his hesitation by saying that failure to destroy the machine in such circumstances was a serious offence in the German service, involving the death penalty.¹ In another case that is on record a German officer carried out his orders with a brutal thoroughness. The Italian "Ace," Lieut. Silvio Scaroni, who describes the incident, had brought down a large German aeroplane, near Treviso, on 26 December, 1917, and the pilot was buried under the débris of the machine. The other occupant, a German major, climbed out, set the machine on fire and completely burnt it, including the body of the pilot.²

There are on record cases in which even when a machine came down on the water its occupants were able to burn it to prevent it from falling into the enemy's hands. According to an Austrian official report of 5 April, 1916, two Austrian seaplanes which had to descend on the sea near Ancona after bombing that town on 3 April, were burnt by their crews and by the crew of a third seaplane, which came down beside them to save the crews of the others.³ Another Austrian seaplane appears to have been burnt near Tarnopol by its two occupants, who were captured by the Russians.⁴ An English officer, Lieut. S. C. Kingsley, was awarded the Military Cross for an action thus described in the official report :—

"To ensure that his machine would be destroyed, he deliberately landed in the sea, at great risk to himself, as he had been wounded, and only with difficulty swam ashore."⁵

A French officer sank his seaplane on another occasion before being captured by a German torpedo-boat.⁶

Burning of machine a military duty.—It is the military duty of a pilot who has landed in enemy ground to destroy his machine if otherwise it would be captured. He may not be punished for doing so. One particular German officer informed an American pilot who had landed in the German lines and burnt his machine there that in doing so he had "wilfully destroyed German property," the aeroplane having become German property the moment it hit the ground! This quite

¹ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 352.

² Quoted in *La Guerre aérienne*, 18 April, 1918, p. 366.

³ See *ibid.*, 18 July, 1918, p. 578.

⁴ *Ibid.*, quoting from the *Fremdenblatt*, 18 February, 1917.

⁵ *London Gazette*, 3 March, 1917; see also C. C. Turner, *The Struggle in the Air, 1914-18*, p. 83.

⁶ See Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 168.

untenable proposition was apparently peculiar to the officer who advanced it; nothing more was heard of it during the American pilot's subsequent captivity and he was well treated as a prisoner of war.¹ Very different was the manner in which the chivalrous Navarre behaved to a German observer who burnt his aeroplane after being brought down in the French lines. Navarre said to him :—

" C'est très militaire d'avoir brûlé volontairement votre appareil. Je vous félicite." ²

The importance of destroying an aircraft in such circumstances is shown by the facts that it was from the captured machine of Garros that the Germans ascertained (in April, 1915) the French system of firing a machine-gun through the propeller or screw,³ and developed it in the way which made the Fokker so deadly a scourge in the following autumn; and that it was from a captured German machine that the Allies learnt the secret of the disintegrating link for machine-gun belts, that is, the device by which the belt is made up of separate metal links held together by the cartridges themselves.⁴

Legitimate to shoot enemy airman to prevent his burning his machine.—If it is an airman's duty to prevent his machine from being secured intact by the enemy, it is equally the duty of the enemy airmen or other military *personnel* to prevent him from destroying it, and to kill him if in no other way can they so prevent him. Sometimes the mere threat to shoot him if he persists in trying to burn it will suffice. M. Mortane records a case in which French airmen landed beside a German aircraft which they had forced down near Salonika in February, 1916, and prevented the two German airmen at the pistol's point from burning their machine.⁵ Capt. W. E. Molesworth, R.F.C., on one occasion prevented a German pilot from setting his machine on fire, after a forced landing, by holding a Very pistol to his head.⁶ Second-Lieut. R. C. Steele, R.F.C., was

¹ Elmer Haslett, *Luck on the Wing*, p. 187.

² Navarre, *Mes Aventures guerrières et autres*, in *La Vie aérienne*, 14 August, 1919, pp. 523-4; see also *La Guerre aérienne*, 1 February, 1917, pp. 179-82.

³ See *La Guerre aérienne*, 30 November, 1916, p. 48; 21 December, 1916, p. 93; 21 March, 1918, pp. 310-12; paper by Capitaine de Corvette Cayla in *L'Aéronautique pendant la Guerre mondiale*, 1919, pp. 165-7; Commandant Féquant in same, p. 43; D. Vincent, *La Bataille de l'Air*, 1915, p. 13.

⁴ See M. Baring, *R.F.C.H.Q.*, 1920, p. 142.

⁵ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 28.

⁶ Group-Capt. A. J. L. Scott, *History of 60 Squadron*, 1920, p. 27.

awarded the D.S.O. for, *inter alia*, landing beside and preventing an enemy airman from burning his machine.¹ In the diary of an officer of the 24th Squadron, R.F.C., under date of 24 January, 1917, it is recorded that—

“ H.A. [hostile aircraft] nose-dives with ‘ wind up ’ and crashes near Maricourt (far behind our lines). Pilot gets out and holds up infantry with revolver. Infantry go back and get armed. Hun surrenders, but has time to burn his machine.”²

If the infantry had been armed in this case they would have been entirely within their war rights in shooting the “ Hun.” It was in trying to hold off the Bedouins until the pilot, Lieut. de Saizieu, of the French aviation, had time to burn his machine, which had had a forced landing in the desert near Beersheba, that the British passenger, Lieut. Ledger, was killed in December, 1915.³ Fonck once prevented an enemy airman whom he had forced to land from burning his machine by firing upon him from the air and wounding him in the arm.⁴ Von Tutschek states that he brought down an English pilot once, and when the latter was on the point of setting fire to his machine fired a round of bullets into the ground just in front of his nose. The Englishman at once escaped from the machine and held up both hands. Tutschek did not fire again but circled around until he saw his victim taken prisoner.⁵

Two important questions which affect air combat, namely, those of *ruses de guerre* and of the munitions which may be employed, affect also operations between air forces and ground troops and are for that reason dealt with in separate chapters.⁶ One therefore passes here to a third question, namely, that of the legitimacy of *ramming* an enemy aircraft.

Air combat not contemplated in 1914.—Before the great war it was sometimes thought that this would be the usual method of offensive action between opposing aircraft. Clement Ader, a pioneer of aviation, contemplated a kind of “ cavalry charge ” in the air, which would leave the side superior in strength masters of the air.⁷ Fighting in the air with machine

¹ See *Flight*, 2 May, 1918.

² Illingworth, *History of 24 Squadron*, p. 24.

³ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 156-7.

⁴ De Chavanges, *De Guynemer à Fonck*, p. 199.

⁵ Von Tutschek, *Stürme und Luftsiege*, 1918, p. 172.

⁶ See chapters vi and vii.

⁷ Clement Ader, *L'Aviation militaire*, 2nd ed., 1916, p. 329 (first published in 1908).

or other guns was hardly foreseen.¹ Commandant Féquant states that aerial combats had never been seriously contemplated in the French service before 1914. The primary rôle of aviation was considered to be reconnaissance and aviators were, in fact, recommended to avoid combat, engagement in which might result in their failing to bring back intelligence of vital importance.² So unknown was air combat in the very early days of the war that a war correspondent could truthfully write: "The aviator need take no more risks in war than he does in peace."³ Another records the remark of a member of the Royal Flying Corps in the first winter that "the air is the safest bit of Flanders to-day"—a consideration which led a comrade of his to apply to go back to the trenches!⁴

Even in September, 1914, a French aviator is reported as expressing the view that for aeroplanes to attack one another was "a stupid and useless game that could succeed only by the merest chance."⁵ The German official view was the same. A report by the German General Headquarters of 1 October, 1914, stated that "a real combat in the air, such as the journalists and fiction-writers have described, is to be considered a myth. The duty of the aviator is to see and not to fight."⁶ By the irony of fate, four days after that report was made a German Aviatik was shot down in air combat by the French

¹ One or two experts did, indeed, foresee regular air combats. For instance, in *Le Combat aérien*, by Lieut.-Aviateur G. Sensever and Ingénieur L. Ballif, 1913, it is stated: "There will be fighting in the air, that is certain! In a war in which the life of two nations is at stake, two enemies will not run away from another either on land or in the sky. They will fight, because it is in keeping with the French as with the German temperament to fight, and, armed or not, doomed to destruction or not, two opposing aircraft will grapple with another, will draw one another on, as the loadstone draws iron. They will fight in the air as men fight on land or under it, on the water or under it, because true soldiers hurl themselves on the enemy wherever they meet him" (p. 9).

² Commandant Féquant in *L'Aéronautique pendant la Guerre mondiale*, 1919, p. 37. "At the commencement of hostilities, reconnaissance was the principal, almost the sole, duty of aviation" (F. Lacroix, *En Plein Ciel*, 1918, p. 161). Evidence that the true rôle of aircraft was considered to be observation rather than fighting is to be found in the fact that British aeroplanes were fitted with wireless apparatus before they were fitted with machine-guns. The first occasion upon which British machines equipped with wireless observed for artillery was on 18 September, 1914 (see *Official History of the War: Military Operations in France and Belgium*, 1914, p. 379). A British machine first mounted a machine-gun in September, 1914 (see G. A. B. Dewar, *The Great Munition Feat*, 1921, p. 192), but machines so equipped were not used in France until a later date (see Major A. Corbett-Smith, *The Marne and After*, 1917, p. 80).

³ G. Fortescue, *At the Front with Three Armies*, 1914, p. 263.

⁴ G. Adam, *Behind the Scenes at the Front*, 1915, p. 119.

⁵ See quotation in *Flight*, 25 September, 1914.

⁶ See this report in Mortane, *Histoire illustrée de la Guerre aérienne*, i. 55-6.

sergeant Frantz and his mechanic Quénault, using a mitrail-leuse according to one account, a carbine according to another.¹

Apparently on the Russo-Austrian front there was a tacit understanding even in March-April, 1915, that air combats should be avoided, reconnaissance being the proper function of aircraft:—

“There are no longer duels of airmen on the Eastern front,” Sir Bernard Pares records under the date of 4 April, 1915; “there were two or three, but now they are apparently forbidden on both sides. It was felt to be waste to lose a competent airman in order to kill one of the enemy. This means that there is no such attempt to drive the enemy from the air as was anticipated by Mr. Wells. Thus on both sides the airman has come to stay, and the whole significance of his work is not in fighting but in scouting.”²

In chapter vii the writer shows how primitive were the weapons of offence which the early war airmen carried, and the nature of those weapons and the dangerously unairworthy condition of the machines then in use—especially the French monoplanes—lend credence to the story that messages were sometimes dropped in those days to the following effect:—

“Useless for us to fight each other; there are enough dangers in the air without that.”³

The ramming of enemy machines.—Those dangers were multiplied manifold before the war ended, but not through encounters such as Ader foresaw. It seemed incredible that men would fight in the air; but they did: *dis geniti potuere*. Stern and bloody battles in the clouds came to pass. But ramming was rare, deliberate ramming very rare indeed.⁴ The first case was that in which the Russian pilot, Capt. Nesteroff, rammed the aeroplane of the Austrian Baron Rosenthal, in the region of Serodoz on 6 September, 1914, both pilots being killed.⁵ On 18 March, 1916, during a raid

¹ Mortane, *op. cit.*, i. 62; D. Vincent, *La Bataille de l’Air*, 1918, p. 10. According to M. Vincent (pp. 10-11), the first German aircraft to be brought down by a French aircraft using a mitrailleuse was that shot down by Stribick and David on 24 October, 1914.

² Pares, *Day by Day with the Russian Army*, 1915, pp. 163-4.

³ H. Bordeaux, *Guynemer, Knight of the Air*, Eng. trans., p. 76.

⁴ E. Middleton, *The Great War in the Air*, 1920, i. 38, states that there are only three recorded cases of the deliberate ramming of an enemy machine, but this writer is far from reliable; the recorded cases are nearer a dozen, but whether these were all authentic cases of deliberate ramming is doubtful.

⁵ C. Lafon, *Les Armées aériennes modernes*, 1916, p. 258; Mortane, *Histoire illustrée de la Guerre aérienne*, i. 61; Crouvezier, *L’Aviation pendant la Guerre*, 1917, p. 115; F. S. di Brazza, *La Guerra nel Cielo*, 1915, pp. 271-3.

on Mulhouse, the machine in which Lieut. Floch was pilot and Sergeant Rode gunner, was set on fire by a bullet in the petrol-tank, and Floch, seeing certain death before his eyes, is stated to have deliberately hurled his machine upon that of his German opponent, with the result that both machines fell to the ground and their occupants were killed.¹ On 27 July, 1916, near Châlons, the French *Maréchal des logis* de Terline similarly drove his blazing machine upon his opponent, Lieut. Freitag, and carried the latter with him to death.² In June, 1917, a British pilot whose name is not stated deliberately rammed the machine of the German pilot Riessinger after the latter had set the Englishman's machine on fire, and both pilots were killed.³ On 1 September, 1917, near Belluna, the Italian pilot, Dell' Oro, finding that his machine-gun had jammed during a combat with an Austrian aircraft, hurled his machine against his opponent's and crashed with it to the ground.⁴ On 10 October, 1918, near Verdun, the American pilot, Lieut. Wilbur White, of No. 147 Squadron, in order to save a comrade, deliberately rammed a Fokker which was attacking his fellow pilot; the two machines telescoped each other and fell together in a heap on the bank of the Meuse.⁵

Accidental ramming.—The case in which Capt. Schütz and Lieut. Page rammed one another on the Tigris on 3 April, 1917, was slightly different. The two pilots charged one another head-on, each being determined not to give way; their machines collided at the wing tips, which were cut off as if by a knife. The Turkish *communiqué* stated that Schütz landed safely, with a wing of the British machine carried off with his own, and that the British machine fell. Lieut.-Col. Tennant states, however, that Lieut. Page succeeded in reaching his aerodrome at Kasirin and that the German machine was burnt

¹ F. de Tesson, *Quand on se bat*, 1916, p. 215; *La Guerre aérienne*, 7 December, 1916, p. 62; 11 January, 1917, p. 131; and 1 February, 1917, p. 177; *The Times*, 1 May, 1916.

² French official *communiqué*, 29 July, 1916; Farré, *Sky Fighters of France*, Eng. trans., 1919, pp. 77-8; C. C. Turner, *The Struggle in the Air*, p. 122; *La Guerre aérienne*, 21 December, 1916, where a photograph of de Terline's wrecked machine will be seen; C. Lafon, *La France ailée en Guerre*, p. 142.

³ The incident is supported only by a statement in the *Frankfurter Zeitung* of 1 July, 1917, reproduced in *The Times*, 3 July, 1917, and in *Flight*, 5 July, 1917, but appears nevertheless to be true; it is unlikely that a German paper would have invented a story which displays the heroism of a British pilot.

⁴ Official *communiqué* issued by the Agenzia Stefani, 9 September, 1917, *Diario della Guerra d'Italia*, iii. 428; *La Guerre aérienne*, 2 May, 1918, p. 405.

⁵ Capt. E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, p. 318.

on landing, its charred remnants being found subsequently where it came down.¹ Other cases of ramming, not so definitely evidenced as those given above, are reported,² and some others, were probably cases of accidental ramming.³ Collisions that were clearly accidental were common. Two of the great German "Aces," Boelcke and Löwenhardt, were killed in this way, and in the French service collisions were regrettably frequent.⁴ It is possible, indeed, that some of the cases which appear on good evidence to have been cases of deliberate ramming may also have been accidental, but that there were instances in which pilots tried deliberately to ram their opponents there can be no doubt whatever. Lieut.-Col. W. G. Barker, V.C., D.S.O., in his great struggle with a host of German machines over the Forêt de Mormal on 27 October, 1918, twice tried to ram machines which barred his way; in each case the enemy pilot swerved aside, and in one case at least the enemy aircraft burst into flames.⁵ Orders to ram if

¹ Turkish official *communiqué*, 6 April, 1917; Lieut.-Col. J. E. Tennant, *In the Clouds above Baghdad*, 1920, p. 133.

² See, for instance, Beach Thomas's report of the ramming of a German aircraft by a British one, in the *Daily Mail*, 2 June, 1917; "Flight," *The Flying Yankee*, 1918, p. 182, who states that a British pilot deliberately rammed a Gotha in a raid on London; *Flight*, 20 June, 1918, quoting a report by Reuter's correspondent with the American Army of the deliberate ramming of a German by an American aircraft (whose pilot's machine-gun had jammed) on 3 June, 1918; Winslow, *With the French Flying Corps*, p. 164, giving a case in which a French bombarding machine, set on fire, rammed a German machine, and which may be the same as the case of Floch and Rode given in the text.

³ See, for instance, M. Baring, *R.F.C.H.Q.*, 1920, p. 179, reporting the ramming by a British Martinsyde of a German machine on 23 September, 1916; *La Guerre aérienne*, 20 September, 1917, p. 715, reporting the case in which *Maréchal des logis* Boulant rammed, either deliberately or accidentally, a German machine 20 kilometres behind the German lines; A. J. L. Scott, *History of 60 Squadron*, 1920, p. 88, referring to the collision of Lieut. A. W. Morey with an Albatross behind the German lines, both pilots being killed.

⁴ See *La Guerre aérienne*, 9 August, 1917, p. 610; Walcott, *Above the French Lines*, 1918, p. 29. These accidental collisions occurred for the most part between friendly machines; British official *communiqués* of 9 June, 18 August, 23 October, and 24th November, 1917, reported losses by collisions between British machines; see also *Diario della Guerra d'Italia*, iv. 465. Some, however, were between Allied and German machines; British official *communiqués* of 12 September, 1916, and 24 September, 1916, reported such cases, and others are recorded in *La Guerre aérienne*, 7 June, 1917, p. 479; 23 August, 1917, p. 646; 15 November, 1917, p. 11; 10 January, 1918, p. 143; 24 February, 1918, p. 261; in *The Observer*, 26 May, 1918, giving the report by Reuter's correspondent at American Headquarters in France of two separate cases in which American pilots crashed unawares into the tails of German machines and destroyed them, themselves returning safely; and in Marc, *Notes d'un Pilote disparu*, 1918, p. 131, giving a case in which a young French pilot fouled a German machine, which crashed, and himself succeeded in landing unharmed.

⁵ C. C. Turner, *The Struggle in the Air*, 1914-18, p. 123; Sir F. H. Sykes, *Aviation in Peace and War*, p. 70.

no other means would suffice to prevent the passage of German machines are stated to have been given to a French squadron in March, 1918.¹

Ramming perfectly legitimate.—How does international law view such a method of offence? The answer is simple: the laws of war do not prohibit the taking of an enemy's life at the cost of one's own. Self-sacrifice is not banned. The fact that deliberately to ram an opponent means almost inevitably death for both attacker and attacked, that such an operation is a measure of ruthless desperation to which there is no real parallel in other kinds of fighting, is immaterial. Any objection there may be to such a method of warfare is founded on considerations not of a legal but of a military nature. M. Lafon puts these considerations succinctly in the following statement:—

"These ramming manoeuvres," he says, "often involuntary in their nature, are to be deprecated, for it is a thousand to one that the "rammer" is destroyed, and we do not admit that the death of a German aviator compensates us for that of a French pilot. There are, however, on record cases in which French aviators, seeing their machines take fire during a combat, have thrown themselves upon their adversaries in order to claim a victim before perishing. In these cases the wrecking manoeuvre is the right one. Our heroic airmen have abbreviated their agony and have certainly not increased their own risk of destruction by this desperate attempt to destroy two enemies."²

In Germany, also, the view was held that deliberate ramming was "a useless and unpractical sacrifice," and hence, though opposing airmen often "charged" one another, they usually drew off at the last moment, to avoid a collision and a catastrophe.³

Parachute descent.—The war rights of attack upon pilots, observers, and gunners in aircraft in the air or upon the ground after landing in action have been dealt with above. It remains to consider the distinct question of attack upon such *personnel* when still in the air but not in their aircraft, that is, when descending by means of a parachute or some similar device. The question is one of increasing importance. Escape by such means is likely to be fairly common in future wars.

¹ W. A. Wellman, *Go, Get 'Em*, 1918, p. 239, says the orders were: "Under no conditions will you allow an enemy's machine to fly over the French and American lines. If they attack and your machine-gun jams, *ram your opponent*. You will start in five minutes."

² C. Lafon, *La France ailée en Guerre*, pp. 128-9. See in the same sense Sir G. Aston, *Sea, Land, and Air Strategy*, 1914, p. 269.

³ Sven Hedin, *With the German Armies in the West*, Eng. trans., 1915, p. 365.

The use of parachutes in the great war.—In the late war the question arose only in regard to escapes from observation balloons. Parachute descents from aeroplanes were comparatively rare. The use of parachutes with aeroplanes appears to have been practically confined, on the Allies' side, to the dropping of ammunition and supplies,¹ and to the landing of intelligence agents behind the German lines for the purpose of carrying out special missions.² The failure to provide pilots with parachutes was sometimes the subject of complaint.³ The life of Raoul Lufbery, the American "Ace," who was killed in May, 1918, as the result of jumping from a flaming aeroplane, was said to have been sacrificed to the neglect to provide pilots with parachute attachments,⁴ and the provision of parachutes was recommended as an urgent necessity in the technical press.⁵ The practical difficulties were, however, great. Various experiments were made and at least one life—that of the French pilot Lallemand⁶—was lost in the course of them. In France such difficulties were encountered in finding a parachute suitable for use with aeroplanes that the attempt to solve the problem was provisionally abandoned; it was only in 1918 that certain fairly satisfactory types of aeroplane parachutes were evolved and these were in course of quantity production at the time of the armistice.⁷ The position was very much the same in England. On 21 March, 1918, Major Baird stated in the House of Commons that experiments with parachutes were proceeding but no suitable one for use from an aeroplane had yet been arrived at. Later, on 21 October, 1918, he stated in reply to a question in the

¹ See, for instance, British G.H.Q. report, 27 August, 1918, and a paper by Major O. W. White on "Battle Supply," in *Journal of Royal United Service Institution*, February-November, 1922, p. 99.

² See later, pp. 277-8.

³ Capt. A. C. Reid (*Planes and Personalities*, 1920, p. 32), for instance, comments upon this failure, which he ascribes partly to an insufficient supply of silk for the great number required, partly to the fear that, if parachutes were provided, pilots would jump out too readily. Major C. J. Biddle (*The Way of the Eagle*, 1919, p. 289) tells of a German observer who took to his parachute and came down in the Allied lines near Rheims in the mistaken belief that his machine was falling out of control. The fall was, as a matter of fact, only the usual spinning dive which pilots used as a ruse to escape from an opponent, and the machine straightened out near the ground and flew back safely to the German lines.

⁴ *New England Aviators* (New York, Houghton, Mifflin Co.), 1919, i. 5; Rickenbacker, *Fighting the Flying Circus*, p. 228.

⁵ See, for instance, an editorial in *The Aeroplane*, 31 July, 1918.

⁶ Killed on 27 March, 1918, in a parachute descent from an aeroplane at Etampes (see *La Vie aérienne*, 24 April, 1919, p. 270).

⁷ Paper by Capt. Bricard in *L'Aéronautique pendant la Guerre mondiale*, 1919, p. 342.

House that reports had been received that German airmen were using parachutes to escape from injured aeroplanes, and that the appliance was effective. Finally, on 30 October, 1918, Major Baird stated that :—

“Sufficient progress with experimental parachutes for use for aeroplanes has been made to justify their provision for certain types of machines for use in France.”

They had apparently already been supplied to at least some of the air force units in France, for Lieut.-Col. W. D. Croft states that he saw a parachute used when a British aeroplane was shot down near Ledeghem in mid-October, 1918 :—

“The observer tried to jump with a parachute, but the latter caught up in the machine and he fell to the ground, where we picked him up stone dead. The pilot turned the machine until she was in a vertical position; then she made a complete *volte-face* and crashed to the ground, a mass of black smoke. There was nothing left of the pilot.”¹

The German use of parachutes in aeroplanes.—In Germany the problem was solved at a slightly earlier date. From the middle of August, 1918, onwards, one finds references in the war correspondents' reports to parachute escapes of German pilots from aeroplanes which had been set on fire or otherwise damaged.² The parachute used was one fixed by a kind of harness to the body of the pilot or observer.³ An American officer who witnessed the escape of a German pilot from a burning machine on 10 October, 1918, has described the descent thus :—

“Attached to his back and sides was a rope which immediately pulled a dainty parachute from the bottom of his seat. The umbrella opened within a 50-foot drop and settled down gradually to earth within his own lines.”⁴

¹ Lieut.-Col. W. D. Croft, *Three Years with the 9th (Scottish) Division*, 1919, pp. 264-5.

² See Beach Thomas's report of 18 August, 1918, in *Daily Mail*, 19 August, 1918; *The Times*, 19 August, 1918; *The Aeroplane*, 25 September, 1918; J. F. B. Livesay in *Daily Mail*, 18 September, 1918; Reuter's correspondent with American Army, in *Daily Mail*, 21 September, 1918; “Wing Adjutant,” in *Daily Chronicle*, 2 October, 1918. The first occasion on which the Australian airmen saw a parachute used by a German pilot of an aeroplane was on 28 October, 1918 (F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 376). The descent of a German airman in a parachute from a burning aeroplane was reported in a Reuter's message from Russia, published on 9 September, 1916, but the report must be accepted with caution.

³ See photograph of the German “Ace,” Lieut. Laumann, in his parachute harness in *La Vie aérienne*, 17 September, 1919, p. 271.

⁴ Capt. E. V. Rickenbacker, *Fighting the Flying Circus*, p. 317. Lieut. E. C. Wright speaks of a “German captain who was taken prisoner after his machine

The German "Ace," Udet, has told in some detail how he escaped by parachute from his Fokker after his elevator control had been cut in a fight with a French aircraft; he landed safely, but his machine was smashed to bits.¹

Parachutes and observation balloons.—If parachute descents from aeroplanes were so infrequent in 1918 that, when accomplished, they excited remark, similar escapes from observation balloons were quite common, both on the German and on the Allies' sides. Observers were provided with parachutes as a normal article of equipment. They were not expected to make use of the parachute until so ordered (by telephone) from the ground,² but in practice this rule was frequently broken, and the observer often jumped out upon the approach of a hostile aircraft without waiting for the order.

"It is advisable," says Lieut. Noble, "to waste no time in jumping out when a plane on business bent appears."³

"Even if it [the balloon] was not actually hit," says Capt. A. C. Reid, "the occupants nearly always had to jump out and trust their lives to a few yards of silk. This they regularly had to do without a moment's hesitation, as unless they anticipated somewhat before you fired and before the gas was set alight, it was generally too late."⁴

In a letter of 31 May, 1916, Brindejone des Moulinais writes:—

"Lately one of us amused himself by flying near one of our 'sausages' in returning from a reconnaissance, and was astonished to see the observer suddenly jump with his parachute headlong into space. He had taken the aeroplane for a Fokker!"⁵

Similarly, Lieut. Lachmann, a French pilot who served on the Russian front, tells how on 27 October, 1917, the observer in a German *Drache* which he approached jumped out in a parachute. Lachmann fired at the balloon, but "the balloon does not burn. For once my mechanic had put in ordinary bullets for me!" (and not incendiaries).⁶ There was, indeed, good

had been shot down in flames and he had been forced to escape in a parachute (*New England Aviators*, ii. 36). It appears, therefore, that such descents were made on either side of the line.

¹ Udet, *Kreuz wider Koharde*, 1918, pp. 180-1.

² Stottmeister in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 252; Gaitz-Hocki (French observer) in *La Guerre aérienne*, 14 November, 1918, p. 850.

³ Noble, *With a Bristol Fighter Squadron*, 1920, p. 138.

⁴ A. C. Reid, *Planes and Personalities*, 1920, p. 134.

⁵ Quoted in *La Guerre aérienne*, 24 May, 1917, p. 448.

⁶ Lachmann, *Mes Campagnes en Russie* in *La Vie aérienne*, 13 February, 1919, p. 115. Wellman (*Go, Get 'Em*, p. 234) also records a case in which two German observers abandoned their balloon upon his approach.

reason for abandoning the balloon before it was destroyed. More than one case occurred in which the observer was struck during his parachute descent by fragments of his flaming balloon; Lieut. G. K. Simpson, R.F.C., was killed in this way on 7 March, 1917;¹ so was Sous-lieut. Ray of the French aviation on another occasion.² The danger is the greater because the flaming balloon may descend more rapidly than the observer in his parachute.

"As we were going along," writes Lieut. G. W. Devenish, in his diary under date of 7 April, 1917, "suddenly we saw two men jump out of a sausage near the side of the road in parachutes. . . . The next moment the balloon burst into flames and started coming down. It was an awful sight. For a terrible moment it looked as though it were going to fall on the two parachutists which were slowly descending below it. But it cleared all right, and very soon after the two observers landed quite all right, and a huge cheer went up from all the men round about."³

The danger of being hit by the blazing balloon and the tendency on that account to jump out before the attack was actually delivered are also emphasised by a German airman-author.⁴ Lieut. Molter gives another reason for making an early "leap for life"; he says that when observers abandon their balloons,

"there is good reason for this, aside from the element of personal safety, and that is the preservation of their notes and data, which they carry with them when they make the jump, and which might be destroyed or fall into the hands of the enemy through the wrecking of the balloon."⁵

The fact that it was usual to abandon the balloon before it was actually set on fire is shown by the *citations* or honourable "mentions" of observers who took to their parachutes

¹ See obituary notice of Lieut. Simpson, in *Flight*, 22 March, 1917.

² Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 287. Sergeant Verneuil was killed on 1 April, 1918, as the result of being hit during his parachute descent by a fragment of the attacking German aeroplane, which had been hit by a shell just after it had set the balloon on fire (Mortane, *op. cit.*, i. 395; ii. 296; *La Vie aérienne*, 6 February, 1919, p. 88). See also Lafon, *La France ailée en Guerre*, p. 124.

³ G. W. Devenish, *A Subaltern's Share in the War*, 1917, p. 155. Lieut. Devenish was himself shot down in flames on 6 June, 1917. At p. 168 of *The Salonika Front*, by W. T. Wood and A. J. Mann (1920), there will be found a painting of an observation balloon falling in flames, and, at a higher altitude, the parachutes of the two observers who abandoned the balloon when it was set on fire.

⁴ Oberleutnant Daenbruch, *Unsere Luftstreitkräfte*, 1917, pp. 45-6.

⁵ B. A. Molter, *Knights of the Air*, p. 196.

only when their balloons were in flames.¹ Their waiting until then would hardly have been thought worthy of special record if it had not been exceptional.

Attack on observer descending by parachute.—May an observer or pilot descending by parachute be attacked as he falls? The question does not admit of easy or general answer. When the descent is over ground held by the forces hostile to those to which the parachutist belongs, to shoot him is at once inhumane and a waste of ammunition. He must be captured in any case, if he succeeds in landing. Ordinarily such a case would not arise in regard to escape from observation balloons, which are erected over the lines of the forces to which they belong. It does, however, sometimes happen that balloons break loose from their cables and are carried over the enemy's lines. Twenty-four French balloons were carried away from their cables near Verdun in a great storm on 5 May, 1916, and a number of them were driven over the German lines.² The observers escaped for the most part by parachute; if, while so escaping behind the German lines, they had been fired upon (it is not recorded that they were), it would have been an act of inhumanity. The case is more likely to arise in connection with parachute descent from free aircraft. One cannot say that there is any definite rule of war upon the point, but it may at least be affirmed that to attack a parachutist in circumstances in which he is certain in any case to be captured would be contrary to the principles of international law.

French orders upon the subject.—Where he is descending over his own lines the question is still more doubtful. Attacks

¹ See, for instance, the citations of Sous-Lieut. Mathieu, Lieut. Guillotin, Sergeant Debas, Adjudant Dunaud, Sous-Lieut. Bex, Lieut. Caron, Sous-Lieut. Depoux, Adjudant Pierson (all of whom quitted their observation balloons only when the balloons were in flames) in *La Guerre aérienne*, 30 May, 1918, pp. 460-1; and Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 283-7. Other cases are mentioned in *La Guerre aérienne*, 19 April, 1917, pp. 355-8. See also F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 284, where it is stated that observers took to their parachutes upon the approach of an enemy aeroplane.

² See Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 270, 278; Lafon, *La France ailée en Guerre*, p. 124. In at least one case a British observation balloon was torn from its moorings by a gale and the observers saved themselves by taking to their parachutes before reaching the enemy's lines (H. Perry Robinson, *The Turning Point*, 1917, p. 122). It may also happen that the cable of an observation balloon is cut by the enemy's artillery fire, and that the balloon drifts in consequence over the enemy's lines; see a case, in which the observers had to take to their parachutes, recorded by Major C. J. Biddle, *The Way of the Eagle*, 1919, p. 208. A case in which an observer in a French observation balloon, which broke from its cable and was drifting towards the German lines, set fire to the balloon and then escaped by parachute, is recorded by André C. H. A., *Au-dessus des Batailles*, 1917, pp. 250-2, 257-63.

upon observers descending by parachute were made on many occasions in the great war. J. N. Hall quotes a French operation order which enjoins such attacks. After the preliminary instructions, it proceeds:—

“No. 1 of each patrol [of three *avions*] will first attack the balloon. If he fails, No. 2 will attack. If No. 1 is successful, No. 2 will then attack the observers in their parachutes. If No. 1 fails and No. 2 is successful, No. 3 will attack the observers.”

“Successful,” it should be observed, must here imply the destruction of the balloon, and to Capt. Hall, at any rate, the order to attack the escaping observers “seemed as near the border-line between legitimate warfare and cold-blooded murder as anything could well be.” His objections were, however, over-ruled by his seniors, who pointed out that the observers would probably be armed with automatic pistols, and that ethically there was no real difference between attacking one observation officer in a parachute and dropping a ton of bombs on a train-load of soldiers. Furthermore, they said, to destroy the observer was really more important than to destroy the balloon.¹

The practice in the great war.—Hauptmann Stottmeister, writing of the work of the German observation balloons, says that even when the observers were hanging defenceless from their parachute, they were subject to attack from the enemy aircraft, which directed a stream of luminous bullets (*Leuchtgeschosse*) at them as they descended.² A similar experience often befell Allied observers at the hands of attacking German pilots. The French corporal Leverrier was killed by a bullet through his head as he swung defenceless towards the ground after his balloon had been set on fire.³ Sergeant Mathieu was fired at while similarly descending on 11 March, 1917.⁴ Sous-lieut. Depoux was machine-gunned as he descended by parachute from his blazing observation balloon.⁵ An American pilot who served in the British flying service relates how an

¹ J. N. Hall, *High Adventure*, 1918, p. 146. As regards the reference to observers being armed with automatic pistols, it is on record that a French observer, *Maréchal des logis* Couillard, while descending in his parachute, continued to fire upon the German pilot, Gontermann, who was attacking him (*La Guerre aérienne*, 13 September, 1917, p. 693).

² Stottmeister in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 253.

³ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 286. The incident happened on 16 September, 1918.

⁴ *Ibid.*

⁵ *Ibid.*, ii. 284.

aircraft of the Richthofen circus followed a British observer who had leapt from an ignited balloon and fired upon him as he fell.¹

"The attacking airman would sometimes fire a few rounds at the unfortunate observer who had jumped and was swinging and dangling from his parachute *en route* earthwards. The Germans were the first to indulge in this merciless practice; the Royal Air Force paid them back in their own coin. Watson [Capt. H. G. Watson, Australian Flying Corps], for instance, in a balloon attack on 1st June [1918], with Cobby's patrol, shot through the rope of a descending observer's parachute."²

Such practices, it will have been seen, were not confined to one side, but to certain Allied pilots they appeared to be contrary to the rules of honourable fighting.

"The Huns," says Walter Noble, speaking of the risks run in parachute descents from observation balloons, "have recently adopted the practice of shooting at the observers as they descend—a fiendish thing to do in my opinion."³

"It was always an unwritten code of honour amongst us," says Capt. A. C. Reid, "not to fire on these unfortunate individuals in their disagreeable descent, but I am afraid the Germans did not play the game in this respect to some of our poor fellows."⁴

"I might have killed them both in the air," says Lieut. Wellman, referring to two German observers floating down by parachutes from a balloon which he was attacking, "but I refrained, for they were unarmed, and the French and Americans do not make war on such."⁵

Capt. Rickenbacker similarly abstained from firing upon a German pilot whose machine was set on fire; he says:—

"I truly wished him all the luck in the world."⁶

"We have often recorded the fact," says M. Mortane, "that the Germans did not hesitate to follow the observers in their parachute descents. This refinement of cruelty, this thirst for blood happily recoiled often upon the butchers of the war, but their criminal audacity was sometimes crowned with success."⁷

"It must be pretty poor fun," says Major C. J. Biddle, of the American Aviation, "to be shot at while one is hanging to the end of a parachute in mid-air. The observer in such a situation is so utterly helpless

¹ "Flight," *The Flying Yankee*, 1918, p. 144.

² F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War*), 1923, p. 284.

³ W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 132.

⁴ Capt. A. C. Reid, *Planes and Personalities*, 1920, p. 134.

⁵ W. A. Wellman, *Go, Get 'Em*, p. 234.

⁶ E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, p. 317.

⁷ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 286.

that it has always seemed to me poor sport to shoot at him, but it has long been apparent that the Huns are devoid of all sporting instincts." ¹

The sparing of parachutists during descent.—It is certain that the writers quoted above voice the opinion of a large number of fighting airmen and one may discern, perhaps, in that opinion the material of a usage of war. Will it harden into a settled rule? Military reasons may seem to demand that a pilot or observer descending in his own ground should not be left unharmed, to be of further service to his country. On the other hand, the effect upon an observer's nerves of even successful descents is stated to be such as sometimes to unfit him for further work of the kind. ² Moreover, there may be a military advantage in not discouraging enemy airmen from taking readily to their parachutes. It is presumably preferable—from their opponent's point of view—that they should do so, rather than that they should brave attack and defend themselves to the end, as even balloon observers can do. Cases are on record in which balloon observers, armed with rifle or carbine, have beaten off attacks by aeroplanes and have even shot their assailants down. ³ To know that, if they escape by parachute, they will become an easy target during their descent, will incline them to harden their hearts and to remain at their post, where at least they will be a little less powerless to defend themselves. There may thus be some military considerations to re-inforce the humanitarian motive in favour of the sparing of the descending airmen, even over their own ground, and the result may possibly be a settled rule of warfare prohibiting attack on parachutists, at any rate in cases of "distress."

The limitations of the concession.—Clearly the concession must be limited to cases in which the airman is descending to escape destruction. It cannot reasonably be extended to those in which the purpose of the parachute descent is to land an intelligence agent behind the other side's lines or to drop by this means from an aircraft which continues its flight an observer or passenger who has a message to deliver to forces on the ground. The rule should, therefore, provide for the sparing of the parachutist only when he is dropping from an aircraft

¹ C. J. Biddle, *The Way of the Eagle*, 1919, p. 209.

² Mortane, *op. cit.*, ii. 270.

³ Cases in which observers in balloons beat off attacks are given in *La Guerre aérienne*, 30 May, 1918, pp. 460, 461, 469, 470; and in Mortane, *op. cit.*, ii. 270-2, 285, 286, 295. One observer, Sergeant Peltier, shot down an attacking Albatross with a Winchester rifle (Mortane, ii. 271, 295).

which is either disabled or completely out of control. It will thus apply, as it should, to the case in which the observer jumps from an aeroplane whose pilot, still in the machine, is dead or unconscious and which is falling out of control ; such an aeroplane would not be a " disabled " one, though " completely out of control."

The rule adopted at The Hague in 1923.—The article which the jurists who considered the rules of air warfare at The Hague in 1923 included in their draft code goes some little way towards such a provision. It is as follows :—

Art. 20.—When an aircraft has been disabled the occupants, when endeavouring to escape by means of a parachute, must not be attacked in the course of their descent.

A suggestion to extend the rule to observers escaping *before* the aircraft is disabled was not accepted. Since, as explained above, observers do normally jump out before the balloon is disabled, the rule approved at The Hague will not apply to the great majority of cases of parachute descent. As it stands, it allows or at any rate does not prohibit the killing of an airman saving himself by parachute from a non-disabled aircraft even when the descent is over his enemies' ground and he is doomed to be captured on landing. This defect at least should be remedied, even if the wider concession suggested by the writer is not accepted.

CHAPTER VI.

RUSES.

Ruses in general.—"Ruses of War," it is laid down in The Hague Land Warfare Regulations (Article 24), "and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible." With this provision must be read that in the preceding Article (23), paragraphs (b) and (f), prohibiting the killing or wounding by treachery of enemy individuals and "the improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive signs of the Geneva Convention." In the British official manual on the laws of land warfare it is stated that ruses "are permissible, provided they are free from any suspicion of treachery or perfidy and do not violate any expressed or understood agreement."¹ The American army manual on the subject states that all ruses are lawful if they do not involve treachery or perfidy, but admits that the line of demarcation between legitimate and illegitimate ruses is not always easy to draw.²

Legitimate and illegitimate ruses—It is in truth a matter of some difficulty to define satisfactorily in general terms what ruses are permissible and what ruses are not. Oppenheim, in his great work on international law,³ adopts Gen. Halleck's distinction between "stratagem" (which is allowed) and "perfidy" (which is not), and lays down the principle that "whenever a belligerent has expressly or tacitly engaged, and is, therefore, bound by a moral obligation, to speak the truth to an enemy, it is perfidy to break his confidence, because it constitutes a breach of good faith." This statement of the rule appears to the writer to emphasise too much one particular kind of deceit—that which takes the form of false communications—and, indeed, hardly to represent the true position in these days of

¹ Edmonds and Oppenheim, *Land Warfare*, § 139.

² *Rules of Land Warfare*, Washington, 1914, § 192.

³ Oppenheim, *Int. Law*, 1921, ii. § 165.

war propaganda and doctored official reports and messages. Moreover, as it stands, if fails to provide for such cases as the following, all of which must be regarded as illegitimate stratagems: (1) that in which a soldier shoots from behind the cover of a wounded man; (2) that in which troops in their advance take shelter behind a screen of non-combatants, driven before them; (3) that in which soldiers hold up their hands and, when the enemy approaches to accept their surrender, suddenly attack him. A preferable formula in the writer's opinion would be this:—

“A procedure, emblem, or signal to which a recognised significance is attached by international law or custom, may not be diverted to another purpose prejudicial to its being respected when used for its original restrictive or humanitarian purpose.”

It is true that this formula does not ban such a ruse as that which Marshals Lannes and Murat practised when they pledged their word of honour, falsely, to the Prince of Auersberg at Vienna in 1805 that an armistice had been concluded; but it is very doubtful whether that ruse was, in fact, an unlawful one.¹ It also appears at first sight to condemn a ruse which is regarded as legitimate under the custom of war, namely, the sending forward of a flag of truce in order to hold the enemy in parley and thus secure time for the retreat of the other army. It does not, however, appear necessary to consider such a case for this reason: a commander is always fully entitled to refuse to receive a flag of truce, to signal back the *parlementaire* and his party, and to fire upon them if they continue to come forward. It is, therefore, within a belligerent's power to nip, as it were, in the bud any ruse of the kind, and if he does not do so, he is himself to blame. The war rights of the matter are generally understood and no special reference to them in the formula proposed is necessary. The circumstances surrounding the other, and illegitimate, ruses are different.

“**Faire le mort.**”—Since ruses would include all kinds of manœuvrings, tricks, and “dodges” in fighting, those which are practised in air combat might well be dealt with in the chapter on that subject. But there are also ruses in which flying men and ground forces are mutually affected, and it is, therefore, advisable to consider the question as a whole separately from that of air fighting. The question of one particular

¹ See the writer's *War Rights on Land*, p. 155.

ruse—the assumption of false “colours” or marks—is dealt with in the chapter on Combatant Aircraft. Once a distinctive mark is made a condition of combatant qualification, the use of a false mark becomes illegitimate in this sense, that it deprives the aircraft concerned of its combatant *status*. There is consequently no need to consider the question under ruses. It may, however, usefully be added here that the corresponding ruse in land war—the use of the enemy’s uniform or his flag—is one which, though formerly permitted, may now be stated to be condemned by both the better practice and the sounder legal opinion of modern times.

Perhaps the chief ruse practised in air fighting is the vertical nose-dive or spin, used by a pilot who is outfought or outnumbered, or whose gun has jammed or engine failed, to escape by simulating a fall out of control.¹ It is sometimes spoken of as a German invention,² but, though it was used to a greater extent by German than by Allied pilots, for this reason, that the air fighting was mostly over German ground, and if an Allied pilot used this manœuvre, or followed down an opponent who used it, he was in danger of not being able to recover sufficient altitude to cross the line again,³ it was common to all services. It was, in fact, used by a French pilot, who is stated to have escaped, when wounded, by pretending to fall out of control, as early as 30 September, 1914.⁴

The German pilots appear, indeed, to have regarded the ruse as a French one. Richthofen, for instance, tells how, in April, 1916, he saw an Allied machine make a nose-dive. “Both my observer and I supposed this to be one of the many tricks (*Kunststücke*) which the French are in the habit of practising.” In this particular case, however, the nose-dive was not a ruse and the machine crashed.⁵ Henkelburg speaks of an English pilot’s making use of “the familiar French airman’s trick (*den bekannten französischen Fliegertrick*) of stopping his engine at the critical moment and letting the machine simply drop.”⁶ References to the use of the ruse by

¹ See, as to the nose-dive or spin, Noble, *With a Bristol Fighter Squadron*, 1920, p. 21; E. M. Roberts, *A Flying Fighter*, p. 254; Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 250. The French called this ruse “faire le mort,” or “tomber en feuille morte.”

² See Noble, *loc. cit.*; S. H. Long, *In the Blue*, p. 88; Bishop, *Winged Warfare*, p. 45.

³ Lieut. P. O’Brien, *Outwitting the Hun*, 1918, p. 18.

⁴ Mortane, *Les Vols émouvants de la Guerre*, 1917, p. 41.

⁵ Richthofen, *Der rote Kampfflieger*, 1917, p. 73.

⁶ Henkelburg, *Als Kampfflieger am Suez-Kanal*, 1917, p. 81.

Allied airmen in combats with Germans,¹ and by the German airmen themselves,² are common in the memories of the German pilots, who speak of the manœuvre as being one used constantly by both sides.³ It is on record that by pretending to fall out of control, a British pilot succeeded in destroying a German kite balloon, which would have been hauled down if he had approached it in the ordinary way.⁴ Sometimes, when falling, German airmen enveloped themselves in smoke in order to give the impression that their machines were on fire and thus to induce the attacking aircraft to draw off and leave them to their apparently inevitable fate.⁵

The ruse of *tomber en feuille morte* was also employed sometimes by a decoy aeroplane in order to induce an enemy machine to follow it in its fall and thus to enable a swifter *chasse* machine in the upper heights of the air to deliver an unexpected attack upon the enemy airmen while his attention was concentrated upon the decoy. A stratagem of this kind, practised by two French airmen, of whom one was apparently Pégoud, is graphically described by the French aviator who writes under the name of André C.H.A.⁶

The ruse a legitimate one.—That such ruses are perfectly legitimate, even if their purpose is to attack, or resume combat, there can be no reasonable doubt. They are well differentiated from the treacherous and therefore unlawful stratagem of "shamming dead" in land fighting and then, when your enemy approaches incautiously, killing him. The airman does not, in fact, feign death; he makes his machine appear to be out of control—a different matter. But, in any case, even if he did feign death, it is very doubtful if the ruse would be an unlawful one, for there is not in air combat, as there is in land fighting, any convention or moral obligation under

¹ See, for instance, Boelcke, *Feldberichte*, 1916, p. 113; Tutschek, *Stürme und Luftstiege*, 1918, p. 126; Frei, *Unser Fliegerheld Immelmann*, p. 31.

² See, for instance, Lieut. Hausse in *Das Fliegerbuch*, 1918, p. 116; Richthofen, *Der rote Kampfflieger*, p. 166; Schäfer, *Vom Jäger zum Flieger*, 1918, p. 91; Udet, *Kreuz wider Kokarde*, 1918, p. 128.

³ Schäfer (*op. cit.*, p. 88) calls it *eine beliebte Finte*; Tutschek (*op. cit.*, p. 185) says: "Fighting airmen use this downward slip (*Abrutschenlassen*) as a manœuvre to deceive an attacking enemy, or they may go into a plunging dive (*Sturzflug*) to escape from a superior opponent."

⁴ Drake, *Above the Battle*, p. 294. This, or a precisely similar case, is also recorded by W. Beach Thomas, *With the British on the Somme*, 1917, p. 53; and by H. Perry Robinson, *The Turning Point*, 1917, pp. 119-20.

⁵ See report by Herbert Bailey, correspondent with the American Army, in the *Daily Mail*, 27 May, 1918; he describes the trick as a new German one.

⁶ André C.H.A., *Au-dessus des Batailles* (*Carnet de Guerre d'un Aviateur*), 1917, pp. 169-71.

which the attacker is expected to cease firing upon a disabled opponent. It is a different matter where an observer or gunner in an aircraft—perhaps because his gun has jammed—holds up his hands in sign of surrender and, having been spared and having utilised the respite to put the weapon in order, subsequently opens fire upon his opponent. That would, it is submitted, be an unlawful ruse. It is true that whether any convention for the giving of quarter in such circumstances can be held to exist as yet is open to doubt, but in the case supposed the benefit of the doubt has, *ex hypothesi*, been given to the surrendering airman. His action in taking advantage of his opponent's clemency to aim at him a stroke which cannot but be regarded as a treacherous one would not be approved by any honourable fighter. Where, however, all that happens is that the airman attacked pretends to fall out of control, even if he subsequently resumes the fight, there cannot be said to be any similar taint of treachery in the action. The attacking airman does, in fact, usually follow his opponent in the descent and often continues to fire upon him or his machine; and the ruse in question is, in any case, now well known. It is more comparable to the feigned retreat in ground fighting—a lawful ruse—than to the illegitimate stratagem of feigning disablement in order to take the enemy off his guard.

Example of an illegitimate ruse.—Altogether different and entirely illegitimate is such a ruse as that attributed to a French pilot in the late war. According to one version of the story, a French aircraft was obliged to land during a combat with a German Aviatik. The German machine landed also. The French pilot simulated death and when the German pilot approached, shot the latter and then ran to the Aviatik and shot the observer. The French pilot and his observer then flew back to camp, the one in the French and the other in the captured German machine.¹ Another version differs in omitting any mention of either a German or a French observer, though otherwise agreeing with the account above.² M. Mortane, who says that the story was told of Garros, and refers to the machine which was flown back in triumph after its pilot had been treacherously killed as a Taube (i.e. probably a

¹ This is the account, quite certainly apocryphal, given by E. Middleton, *The Great War in the Air*, i. 189.

² See G. Crouvezier, *L'Aviation pendant la Guerre*, 1917, p. 112. This version refers to the French "hero" of the tale as Lieut. P—— (possibly Pégoud).

Gotha Taube), not an *Aviatik*, denounces the whole tale as pure fantasy ;¹ it was merely sensational war news and is worth mentioning only as an illustration of a ruse that would have been illegitimate.

A legitimate ruse.—A ruse which is mentioned by Major C. J. Biddle, American Aviation, appears to have been a legitimate one, for, though it involved "shaming dead," the pilot concerned did not take advantage of his escape to resume attack. An American pilot was forced down in the German lines. "When he landed he left his motor turning over slowly and lay over in his cockpit as though he had been shot, the Huns all the time circling just above his head. They evidently thought he was done for, for after looking him over they flew away, whereupon our pilot took off and came home."²

The "decoy bird."—A common and quite unobjectionable ruse was that of the "decoy bird." One machine—sometimes an old and slow one—would be flown at a height of a few thousand feet below a patrol, which would fall upon any hostile aircraft attracted by the apparently easy prey ; or the decoy would be used to draw enemy machines within the range of the anti-aircraft gunners of its own side.³ Another lawful ruse was the "staging" of air combats between two friendly machines with the object of inducing enemy airmen to come to the assistance of a supposed comrade.⁴ Two Austrian pilots are stated to have succeeded in destroying an Italian observation balloon in November, 1917, by a ruse of this kind. They pretended to be engaged in an air combat, circling round and firing at one another, and were thus able to approach the balloon before it could be hauled down.⁵

An anti-aircraft gunners' ruse.—A trick of the German anti-aircraft gunners was to "archy" their own 'planes—firing carefully to avoid hitting them—with the object of persuading the Allies' pilots that the machines under shell-fire

¹ Article by M. Mortane on "Garros militaire" in *La Guerre aérienne*, 21 March, 1918, pp. 310-12. The story is told of Garros in F. S. di Brazzà, *La Guerra nel Cielo*, 1915, pp. 274-5.

² C. J. Biddle, *The Way of the Eagle*, 1919, p. 280.

³ See Bishop, *Winged Warfare*, p. 185 ; Capt. A. Bott ("Contact"), *An Airman's Outings*, p. 66 ; B. A. Molter, *Knights of the Air*, p. 142, where it is stated that the ruse of the decoy was first practised by the famous French Escadrille No. 3—the "Cigognes" ; "Flight Commander," *Cavalry of the Air*, 1918, pp. 80-1.

⁴ See W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 142.

⁵ Report by G. Ward Price from Venice, 27 November, 1917, quoted in *The Aeroplane*, 5 December, 1917.

were their own and that no German machines were in the sky.¹ A British pilot states that he was led into a trap by seeing machines which he took for British scouts being "archied" by the German gunners; they were really German machines, and it was a carefully arranged trick to induce him to join his "friends," who would promptly have turned upon him.² A ruse of this kind is perfectly legitimate.

A ruse of Hawker's.—Another permissible ruse that may be mentioned was that adopted by Lieut. (afterwards Major) L. G. Hawker in order to attack a German airship shed at Gontrode in April, 1915. According to the note to the award of the D.S.O., which he gained by his exploit, he "displayed remarkable ingenuity in utilising an occupied German captive balloon to shield him from fire whilst manœuvring to drop the bombs."³ Such a stratagem is altogether different from the unlawful one of taking cover behind a wounded man in order to fire.

The death of Von Eschwege.—It is possible that the next war will see some kind of new "fireship" of the air in use—an aircraft operated by "distant control" (wireless) and filled with high explosive which will be detonated when the vicinity of hostile aircraft or some given enemy position is reached. A ruse which may be the embryo of many wonderful developments was practised by the British forces in the Struma Valley in Macedonia in November, 1917. The German "Ace," Lieut. Von Eschwege, the hero of 20 victories, had been very active against observation balloons and, in order to entrap him, a "dummy observer," filled with melinite, was placed in a balloon; and when Von Eschwege attacked from point-blank range, as usual, the charge was detonated and Von Eschwege and his machine were destroyed.⁴ The ruse was a legitimate one. So was the ruse—if it was a ruse—by which two French pilots were killed. Each of them (there appear to have been

¹ W. Noble, *With a Bristol Fighter Squadron*, p. 141.

² Capt. A. E. Illingworth, *Fly Papers*, pp. 52-5.

³ *London Gazette*, 8 May, 1915.

⁴ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 53; *La Guerre aérienne*, 25 July, 1918, p. 396. The Bulgarian *communiqué* of 22 November, 1917, reported that Von Eschwege was "brought down by the enemy's anti-aircraft fire." The Von Eschwege case is referred to by Flight-Lieut. Worthington in a paper on "Work of the Kite Balloon on Land and Sea," in *Journal of the Royal United Service Institution*, February-November, 1920, p. 488. The Germans also used dummy observation balloons for the purpose of stratagem, but of a different kind, viz., to lure Allied machines into the range of accurate artillery fire (see C. J. Biddle, *The Way of the Eagle*, 1919, p. 257).

two separate accidents) collided with the cable of an observation balloon which was itself hidden above a cloud. It is not stated whether it was deliberately so placed or not, but, if deliberate, the ruse was a perfectly lawful one.¹

A similar attempt.—A ruse similar to that which brought about the death of Von Eschwege is stated to have been tried, but with less success, by the British forces in Palestine on 28 April, 1918. "The officer commanding the balloon section laid a booby trap for the next Hun. He sent up an old balloon, filling its car with explosives, which were connected by an electric cable to a switch on the ground. The enemy plane was to be allowed to approach as near as possible and then, at the psychological moment, the explosives were to be detonated electrically. The Boche opened fire on the balloon from a respectful distance, but, noticing that our "Archies" took no interest, he boldly came nearer. He must have had the surprise of his life when, with a terrific report, the balloon burst and disappeared into thin air, fragments flying in all directions. His plane swayed and jolted and we thought he was coming down, but he recovered himself well and made off home as fast as his legs, or rather planes, could carry him."²

A German ruse.—A *ruse de guerre* which was sometimes practised by German aircraft has been thus described by a French writer: "If one of our squadrons goes out to bomb some point in enemy territory by night, one or two German machines watch for the return of our airmen and, when they have passed, follow or 'shadow' the French squadron at a short distance behind. One or two machines more or less are not always noticed and it is thus that a line of listening posts (*ligne d'écoute*) can be crossed."³ Such a ruse is quite legitimate.

Imitation of the enemy's signals.—Whether it is legitimate to imitate the enemy's words of order and signal calls—the trumpet calls of his cavalry or the bugle calls of his infantry—is a question upon which some doubts have been expressed by jurists,⁴ but such a ruse must certainly be admitted under the practice of war.⁵ No exception can be taken to the copying

¹ *La Guerre aérienne*, 26 September, 1918, p. 742.

² Capt. John More, *With Allenby's Crusaders*, 1923, p. 185.

³ Maurice Thiéry, *Paris Bombardé*, 1921, p. 188.

⁴ See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1088.

⁵ It is stated to be permissible in the British official manual, *Land Warfare*, § 144; and in the American official *Rules of Land Warfare*, § 193.

of the enemy's Very light, Klaxon horn or wireless signals,¹ or the ground panels displayed for the information of his aircraft,² or the anti-aircraft gunner's signals by shell-bursts to his aircraft.³ An officer who served in the British air force relates the following incident :—

" One day a Hun plane came over the aerodrome after we had gone up and found it too misty to operate. We had hardly reached the ground again when out of that pea soup overhead came down in our own code the message : ' Too misty. Go home ! ' Only it was a Hun birdman who had given us that kind message. . . . He knew our code of signals [for artillery observation work], and would wait until a machine [R.F.C.] spotted a gun somewhere near a target, but not close enough for our observers to advise the use of the entire battery. Then he would come in with his call and order a salvo. The battery commander, not knowing that the signal was not from his own observer, would fire and, maybe, waste from ninety to one hundred rounds of good ammunition in an open field. Meanwhile, the infuriated pilot or his observer would have to race back to the aerodrome and telephone to the battery to stop it." ⁴

A German pilot is stated to have been captured, to his loudly-voiced indignation, as the result of an answering signal given to him from a British aerodrome which he mistook for a German one at night.⁵ Another ruse is described by the British official " Eye-witness " on the western front, who calls it a " clever trick which is unmarred by any suspicion of foul play and is worthy of admiration on account of its ingenuity." This was the German's ruse of deceiving the British anti-aircraft gunners as to the nationality of the aeroplanes engaged in reconnaissance or observation duty. As soon as a British machine was seen using daylight flares as signals to its own guns behind, the German artillery opened fire upon targets which had been already registered, and the fact that a salvo followed at once upon the signal was calculated to lead the British anti-aircraft gunners to imagine that the signalling machine was German.⁶

Aerial acrobatics.—Often ruses which took the form of stunts or aerial acrobatics were done simply to " annoy the Hun " and make him waste anti-aircraft shells. Capt. Cunningham Reid

¹ See Bott (" Contact "), *An Airman's Outings*, p. 192 ; Elmer Haslett, *Luck on the Wing*, p. 157 ; C. C. Turner, *The Struggle in the Air*, 1914-18, p. 172.

² Haslett, *loc. cit.*

³ Hall and Nordhoff, *Lafayette Flying Corps*, ii. 266.

⁴ E. M. Roberts, *A Flying Fighter*, 1918, pp. 142-3.

⁵ S. H. Long, *In the Blue*, p. 100.

⁶ See *The Times*, 13 July, 1915.

tells of a fellow-pilot who would perform the most hair-raising feats over the German lines out of pure devilry, "and every Sunday he would write to his mother that he was taking the greatest care of himself, and hoped the cat was better."¹ Another British pilot is stated to have enabled his infantry comrades to capture a German trench by performing acrobatics over the trench and thus diverting the attention of the defenders from the assault on the ground.² Ruses of this kind are clearly legitimate, as, needless to say, is the employment of low-flying aircraft to "drown" the noise of the engines of tanks moving upon the enemy's position.³

Bombing after false signal.—Oberleutnant Siegert describes an Allied pilot's ruse which he denounces as dishonourable but which appears to have been practised also, in point of fact, by the Germans themselves. He states that on 15 February, 1918, an enemy aeroplane appeared over the German aerodrome at Aincourt and gave the Morse landing signal of the German squadron. The ground troops, thinking it was a German aircraft, set out the landing lights, whereupon the aeroplane directed machine-gun fire upon them and dropped six bombs, killing an officer and wounding some men.⁴ An almost exactly similar stratagem is attributed by an officer of the British service to a German pilot, who, he states, "flew over our aerodrome, shooting down our 'color of the day,' blinking his navigation lights, and finally firing down a red light which was our pre-arranged forced-landing signal. The aerodrome officer, believing that one of the Bedouin machines [British] was returning from that night's raid with engine trouble, lit up the 'landing T' and brought upon himself a shower of bombs which carried him into the Unknown."⁵

A similar ruse is stated to have been carried out, early in 1916, by two Belgian airmen, Jenatzky and Rolin, who, as pilot and observer in a Farman biplane, followed three German machines one night to the German aerodrome at Ghisteltes and observed the lamp signals which the German airmen gave for the lighting-up of the aerodrome before they landed. The Belgians imitated the German signals and then, when the

¹ A. C. Reid, *Planes and Personalities*, 1920, p. 150.

² A. E. Illingworth, *Fly Papers*, 1919, p. 47.

³ Such a stratagem was used in the Fourth Army in France (see Montgomery, *The Story of the Fourth Army*, 1919, p. 156).

⁴ Oberleutnant Siegert, in Neumann, *Die deutschen Luftstreitkräfte im Weltkriege*, 1920, pp. 446-8.

⁵ Lieut. R. H. Reece, *Night Bombing with the Bedouins*, 1919, p. 60.

aerodrome was lighted up for their descent, released their bombs upon the German ground *personnel* waiting to receive them on landing.¹

Circumstances in which such a ruse is legitimate.—Is such a ruse an illegitimate one? The writer submits that in the circumstances which existed in the great war it was not. In those circumstances the only aircraft that could be concerned were either the military aircraft of the belligerent whose aerodrome was visited or the military aircraft of the enemy. Civil aviation was non-existent. Hence the machine displaying or firing the landing signal must have been either friend or foe, and, in either case, a combatant aircraft. The conditions were, therefore, such that the ground party should have been "on inquiry." They were not bound to assume that the machine was one of their own; they should have reckoned with the possibility that it was a hostile one which had somehow discovered their landing signal. No sacredness attached to that signal. If in doubt, they could have refrained from displaying the ground flares; in that case, no doubt, the machine, if genuinely trying to alight, might have crashed, but that was a result which the enemy was entitled to bring about if he could. In other words, the effect of the ruse would have been to increase the possibility of the destruction, in other cases, of the aircraft of the belligerent whose aerodrome was visited, and such destruction was a legitimate end for the enemy to seek. The ruse was, in fact, not altogether dissimilar from that by which two enemy forces are induced to fire upon one another in the mistaken belief on the part of each that the other is hostile. Such a ruse is not considered unlawful.

It would be a different matter if the aerodrome concerned were one used also by civil aircraft and if the signal given were one recognised as the standard one to be given by any aircraft (military, civil, neutral) trying to land; e.g. if it were the

¹ *La Guerre aérienne*, 26 April, 1917, p. 375. A ruse which did not involve the use of enemy signals, but otherwise resembled those quoted here, is stated to have been carried out by a Squadron-Commander of the R.F.C. He flew to a German aerodrome, the pilots at which had been disinclined to accept combat, and dropped there a brown paper parcel, which, after some attempts to explode it by rifle-fire, the Germans unwrapped—with the astonishing result that they discovered a pair of boots. To the boots the following message was attached: "If you won't come up here and fight, herewith one pair of boots for work on the ground. Pilots—for the use of." Gradually a crowd gathered round to enjoy the joke, when suddenly the British pilot, who had been waiting in the mist for his opportunity, again flew overhead and dropped two bombs on the party, causing many casualties. ("Wing-Adjutant," *Plane Tales from the Skies*, 1918, pp. 68-9.) The ruse—if the story is true—appears to have been a legitimate one.

international landing signal. In that case the legitimacy of the ruse would be much more questionable. It would be akin to the sending out by a warship or an aircraft of the "S.O.S." or distress signal, for the purpose of entrapping an enemy ship or aircraft. A ruse of the latter kind would be illegitimate, as a treacherous misuse of a code adopted for humanitarian purposes.

The placing of false ground flares.—It would be equally illegitimate to place ground lights or landing flares round a mock "aerodrome," naturally or artificially dangerous for aircraft, if civil or neutral machines were likely to land there. If, however, the circumstances were such—as they were in the great war, or as they would be in a future war if civil aircraft were prohibited from entering the district concerned—that the only users of the "aerodrome" were combatant aircraft, hostile or friendly, such a ruse would be unobjectionable. The Germans on some occasions set out ideal landing grounds for enemy aircraft in places where they expected secret service agents to be dropped, and wired these grounds with taut iron wires in order to trap any machines landing there.¹ Such a ruse could not be considered illegitimate, nor could that adopted by the Allies of lighting up a big potato field with landing flares, to give it the appearance of an aerodrome.² To surround a wood with landing flares, so that enemy aircraft should mistake it for an aerodrome at night and bomb it,³ would be also permissible if the likelihood of consequent danger to civil and neutral aircraft were excluded. It need hardly be added that it was entirely legitimate to practise such a ruse as that which No. 216 Squadron, R.F.C., the "Reprisals" Squadron, are stated to have carried out in 1918. They moved their machines from their aerodrome at Ochey to a neighbouring wood, leaving the hangars standing, and the enemy continued for some months to bomb the old aerodrome, in the mistaken belief that the machines were still there.⁴

Camouflage against aircraft.—The use of aircraft in war has led naturally to the adoption of measures calculated to conceal

¹ J. Mortane, *Special Missions of the Air*, Eng. trans., p. 16. Guynemer nearly fell into a trap of this kind (see Mortane, *Guynemer, the Ace of Aces*, Eng. trans., 1918, p. 15).

² V. Drake, *Above the Battle*, p. 250.

³ See *The Aeroplane*, 11 October, 1916. A ruse of this kind is stated to have recoiled upon the heads of the perpetrators of it, for their own night-flying machines fell into the trap set for the enemy.

⁴ See Middleton, *The Great War in the Air*, iv. 167.

from their observation what is going on behind an army's lines, or to divert their attention from the real point of concentration or the venue that is being prepared. The art of camouflage for the special purpose of deceiving the enemy's reconnaissance aircraft has been carried to a high degree of perfection. As long ago as the German manoeuvres of 1910 use had been made of dummy or decoy trenches and earthworks to mislead aerial observers. The dirigible M. 3 was completely deceived by the mock earthworks of the Red Army at that time, and as a result the Blue Army wasted its energies in assaulting an entirely unoccupied line.¹ In the great war, the most minute care was devoted to this kind of special camouflage. Both at the front and in the interior of the belligerent countries all kinds of deceptions were staged for the edification of enemy aviators. Some were almost comic. In the spring of 1916, the British Parliament interested itself in the matter of a dummy gun which was erected in an east coast town. Its object was unkindly alleged to be the reassuring of the local population, but Mr. Tennant, the Under-Secretary of State for War, rehabilitated its character by describing it as a *ruse de guerre* intended to deceive enemy airship commanders.² Possibly the intention was to explode dummy charges near the gun when the airships came overhead; a ruse of this kind is said to have been employed by the Germans.³ The French airmen were fully alive to the need for discounting much of what they saw in their raids into Germany; they knew, for instance, that in any place which was lighted up at night there was really nothing to attack.⁴

Devices to deceive enemy aircraft.—The devices for deceiving and misleading the enemy's reconnaissance and photographic aircraft included the screening of roads, usually by green canvas coverings, from observation from above,⁵ and, conversely, the camouflaging of military buildings by making their roofs look, from overhead, as the continuation of roads

¹ See *Flight*, 17 September, 1910.

² See *The Times*, 7 April, 1916.

³ "The Huns have even gone to the length of constructing dummy batteries and exploding small charges near the dummy muzzles to delude hostile aircraft into the belief that they were the genuine article" (V. Drake, *Above the Battle*, p. 204).

⁴ See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 254.

⁵ See report by Beach Thomas in the *Daily Mail*, 5 September, 1918: "I found between Bullecourt and Quéant whole roads roofed and walled by camouflaged wire to the likeness of a long arcade, broad and high enough for the biggest lorries."

and hedges on each side. Dummy headquarters, casualty clearing stations, concentrations of tanks, battle training operations, and all the preparations for an attack, were elaborately displayed for the benefit of the enemy's aerial observers behind sections of the front in which no operations were, in fact, contemplated.¹

Before the battle of Amiens in July, 1918, elaborate measures were taken by the British high command to make the enemy believe that an attack further north, in Flanders, was intended. "Arrangements were made to give the impression that a great concentration of tanks was taking place in the St. Pol area. Training operations, in which infantry and tanks co-operated, were carried out in this neighbourhood on days on which the enemy's long-distance reconnaissance and photographic machines were likely to be at work behind our lines."²

During one of the Italian offensives on the Carso, the Austrians, while massing great forces to oppose the advance at another point, deceived the Italian airmen by directing long lines of wagons (empty) and great columns of artillery (made of wood) behind a different part of the front. "The Germans were also in the habit of constructing entire fictitious aviation camps so as to induce Allied aviators to believe that great offensive preparations were being centered at that point, whereas in reality the enemy planes were gathering quietly elsewhere."³

"When we moved away from the various bivouacs at this time we always left tents standing with a few men to light fires, so that to an airman it would look as though the camps were still inhabited," says Capt. John More, referring to Gen. Allenby's force in Sinai in 1917.⁴

The Germans on their side are stated to have deceived—for a time—British airmen by making a "dummy" bivouac in a wood about ten miles behind the front. They lit a great number of fires in the wood and the spirals of smoke ascending from these fires caused the airmen who passed over it to believe that a large infantry concentration was being hidden in the wood, wherein, in point of fact, there were no troops.⁵

¹ See C. C. Turner, *The Struggle in the Air, 1914-18*, pp. 206, 215.

² Sir D. Haig's dispatch of 21 December, 1918; *The Times*, 8 January, 1919.

³ Lieut. Camillo de Carlo, *The Flying Spy*, Eng. trans., 1919, p. 54.

⁴ More, *With Allenby's Crusaders*, 1923, p. 87.

⁵ "Flight Commander," *Cavalry of the Air*, 1918, pp. 85-95.

The German official instructions as regards camouflage to escape aircraft observation were particularly elaborate.¹ With true German thoroughness they provided for every detail and left nothing to chance.

Dummy factories.—In a German official document dealing with measures of anti-aircraft defence and quoted in full by M. Mortane, one finds detailed directions for the establishment of "dummy factories" designed to deceive the enemy's bombing aircraft. These factories should, it is stated, be located at a distance of one or two kilometres from the real factories and protected by anti-aircraft guns; their lights should correspond as closely as possible with those of their originals and the flame and smoke of the real factories should be reproduced by various devices which are described. As soon as the approach of the enemy bombers at night was notified, the real factories were to be plunged in darkness and the "dummies" lighted up, and then, when the aircraft actually appeared, the lights in the "dummies" were to be successively lowered, until a few only were left, these last lights being extinguished only when the first bombs fell. The instructions furnish a remarkable picture of the ingenuity and thoroughness of the German anti-aircraft devices.²

Dummy submarines.—Not only on land was it sought to mislead the enemy's aircraft; with equal ingenuity the Germans placed in the North Sea dummy floating mines with periscopes attached and showing above the water, in order that the British airmen should be led to believe that they had to deal with enemy submarines and should waste bombs upon them.³

The ruse of the reversed march.—The ruse of reversing temporarily the direction of a march was used on both sides. "Aeroplane observers can easily be deceived by a body of the enemy who, on sighting the aeroplane, move at once in a contrary direction to that of the real march, and turn back as soon as the machine has gone to give the news."⁴ Col. Tennant quotes a Turkish order which was captured in the Kara Tepe operations in Mesopotamia in December, 1917, instructing the

¹ See those of 6 July, 1918, quoted in Mortane, *Histoire illustrée de la Guerre aérienne*, i. 429-32.

² *Ibid.*, ii. 218.

³ See *The Aeroplane*, 19 May, 1915.

⁴ Maj.-Gen. Sir C. V. F. Townshend, *My Campaign in Mesopotamia*, 1920, p. 163.

Turkish infantry to try to deceive the British aeroplanes by setting out at once upon the march towards Jebel Hamrin if the aeroplanes came into sight and only to return to Kara Tepe upon the withdrawal of the aeroplanes. "It was an old ruse," says Col. Tennant, "and we knew it well."¹

¹ J. E. Tennant, *In the Clouds above Baghdad*, p. 238.

CHAPTER VII.

SPECIAL AMMUNITION.

The instruments of warfare.—It is an accepted principle of international law that the right of belligerents to adopt means of injuring the enemy is not unlimited. It is, indeed, one of the two great distinguishing features of civilised war that this principle is recognised: the other being the differentiation between combatants and non-combatants. So far as the material means or instruments of destruction are concerned, the principle resolves itself in practice into the prohibition of the use of two categories of munitions: first, those which destroy or disable by *poisoning* (or asphyxiating) the enemy *personnel* affected; secondly, those which aggravate *unnecessarily* the sufferings of individuals.¹ The prohibition of the use of poison is one of the oldest and most generally admitted rules of warfare. There is something treacherous and abhorrent to civilised fighters in the idea of encompassing an enemy's destruction by such a method of war, and those who resort to the practice have for ages been regarded as foul fighters.² To the Dacian Goths (of the fifth century), who were themselves "barbarians" to the Romans, the Sarmatians

¹ Oppenheim, *Int. Law*, 1921, ii. § 110, would make the prohibition of the use of poison a deduction from the more fundamental prohibition of all means which render death inevitable. It is true that the Declaration of St. Petersburg, in its preamble, prohibits all such means, but (as von Moltke pointed out) the terms of that Declaration are too wide. They would, for instance, ban the use of high-tension electric current as a means of defence, yet this is not in fact prohibited by the custom of war. (The use of electric current for this purpose dates back to the Russo-Japanese War, 1904-5. In *The Times* of 26 October, 1918, Mr. Humphrey Page, an Indian civilian who was living in Bruges during the German occupation, states that a British bombing machine was brought down there by electric wires on 15 May, 1917, and its three occupants were killed. High-tension currents were also used to guard frontiers.) It appears from a note to the passage of Oppenheim referred to that he had intended before his death to reconsider the view there expressed. The fact is that it cannot be substantiated by practice. The prohibition of poison, as stated in the text above, is a far older rule than that from which it is stated to be deduced.

² See Pillet, *La Guerre actuelle et le Droit des Gens*, in *Revue de Droit Int. Public*, 1916, p. 426.

who used poisoned arrows were "barbarians" in turn. The fact that a great modern nation has recently fallen so low as to revive the use of poison in war cannot alter history's condemnation of such a practice.

Asphyxiating or poisonous gas.—The international agreements prohibiting the use of poison and poison-gas are as follows :—

Declaration of The Hague, 1899, by which "the contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases."¹

Article 23 (a) of the Rules for Land War, The Hague, 1907, forbidding the contracting Powers "to employ poison or poisoned arms."²

Article 5 of the Washington Treaty of 6 February, 1922, for the protection of the lives of neutrals and non-combatants at sea in time of war and to prevent the use of noxious gases and chemicals, which provides that—

"The use in war of asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices, having been justly condemned by the general opinion of the civilised world, and a prohibition of such use having been declared in Treaties to which a majority of the civilised Powers are parties, the Signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such prohibition, agree to be bound thereby as between themselves and invite all other civilised nations to adhere thereto."³

The Declaration of 1899 and the Land War Rules of 1907 are applicable, under their express provisions, to wars in which contracting Powers are alone engaged; the Agreement of 1922, though concluded only as between the five Powers signatory of it, lays down a rule of international law expressed to be

¹ The following great Powers have ratified or acceded to this Declaration: Great Britain, France, Germany, Austria-Hungary, Italy, Russia, Japan; *not* the United States, but United States troops are considered to be bound by the obligations imposed by the Declaration: it is quoted in the American official *Rules of Land Warfare, 1914*, with a cross-reference to Article 23 (e) of the Hague Rules (by which the United States Government is formally bound), prohibiting the use of arms, projectiles, or materials calculated to cause unnecessary suffering.

² The Hague Convention covering the Land War Rules has been ratified by the following great Powers: Great Britain, France, Germany, Austria-Hungary, Russia, United States, Japan. Italy signed but did not ratify.

³ The Treaty is between the United States, the British Empire, France, Italy, and Japan. Its text will be found in White Paper Miscellaneous, No. 1 (1922) (Cmd. 1627), and also in Prof. G. G. Wilson's *Int. Law*, 8th ed., 1922, Appendix XII.

of universal application. The observations which the writer makes later in this chapter upon the general applicability of the international agreements in regard to explosive and expanding bullets may be taken as applying also to the first two agreements quoted above.

The interpretation of the Washington rule.—The limitation in the Declaration of 1899 of its prohibitory rule to projectiles whose *sole* object (*but unique*) is the diffusion of asphyxiating or deleterious gases, must now be assumed to be overridden by the more absolute prohibition in the Washington Treaty. The rule of 1899 would permit the use of a shell or bomb which, although its primary purpose was disruptive, had the incidental effect of being (even gravely) poisonous. The rule of 1922 would apparently forbid the use of such a projectile. The question involved is one of considerable difficulty. It may happen that a projectile, while certainly not intended to asphyxiate, does, in fact, produce fumes which have a temporarily asphyxiating effect. In the Boer War of 1899-1902, complaint was made that the British lyddite had such an effect; but the British Government held, and its views were supported by responsible jurists, that lyddite was a legitimate explosive.¹ The position under the Washington rule is not clear, but it is to be presumed that that rule will be interpreted in the light of practical considerations. One cannot expect a high explosive shell or bomb to give off fumes of pure ozone. Regard must be had to the main effect of the projectile and to the intention of those responsible for its use. Whether a shell or bomb is or is not asphyxiating is a question of fact, to be ascertained in each case. No doubt it can be ascertained whether a projectile is, in fact, designed to slay or disable by rending and tearing or by choking and poisoning, and if there were good faith on both sides little difficulty would probably be encountered. But there is a distinct danger that an unscrupulous belligerent who wishes to find an excuse for using gas may find it in the use by the enemy of a shell or bomb which was not intended to be asphyxiating or poisonous but does, in fact, emit noxious fumes. It is desirable that, if possible, the Washington prohibition should be expanded to

¹ See Fauchille-Bonfils, *Droit Int. Public*, 1921, ii. § 1082. The legitimacy of lyddite and certain similar explosives was apparently also challenged in the great war (see A. A. Martin, *A Surgeon in Khaki*, 1915, pp. 210-1, where the difference between the fumes emitted by lyddite, melinite, or turpinit, incidentally to the bursting of the charge, and the unlawful poison gas used by the Germans, is explained).

provide that such a shell or bomb may not be treated as infringing the prohibition, provided the main effect is not asphyxiating or poisonous.

The use of non-lethal gases.—The Washington rule prohibits, it will be observed, not only poisonous and asphyxiating gases but also "other gases" and (to emphasise the comprehensiveness of the prohibition) "all analogous liquids, materials or devices." It condemns, therefore, not only lethal but also non-toxic or anæsthetic gases.¹ The argument that because the effect of a gas is not to kill but merely to stupefy temporarily those within its radius of action, its use is permissible, cannot be sustained in face of the definite terms of the Treaty. If, therefore, any nation which is a party to that Treaty resorts in a future war to the use of gas in any kind or form, whether it be chlorine, phosgene, mustard or any less harmful variety, that nation is breaking its solemn undertaking and sullyng its national honour. It is necessary to emphasise this unquestionable truth in view of the prediction of an able military writer that non-toxic gas, sprayed by aircraft, will be the munition of the future.² He foresees armies in column of march put to sleep by this means, fleets forced to surrender because their crews are smitten by a gas-caused form of colic, capital cities reduced to "one vast raving Bedlam" by being enveloped in the fumes of non-lethal gases. Fortunately, one is justified in questioning the probability of the whole forecast and in pointing out that, on the whole, Treaty obligations are honourably observed by civilised nations, more especially where, as here, they relate to "a game at which two can play." It simply would not pay to re-introduce gas warfare: therein lies the strength of the Washington rule, as that of any and every restrictive law of war. If one belligerent breaks the laws of war by using gas, the other is entitled to resort to reprisals and also to use gas—and not necessarily a gas as "innocuous" as that used by the former. A hideous cycle of strokes and counterstrokes is opened by the first step away from a prohibitory rule. Germany's use of gas in 1915 recoiled upon her own head.

¹ See on this subject T. J. Lawrence (P. H. Winfield's ed.), *Int. Law*, 1923, pp. 531-2.

² Col. J. F. C. Fuller, *The Reformation of War*, 1922, pp. 120-51. Capt. René Fonck (*L'Aviation et la Sécurité française*, 1924, pp. 128-30) also regards gas as likely to be the munition of aircraft in future wars. He adds: "I am not concerned with discussing here the legitimacy of the use of this means." As regards the use in general of gas bombs by aircraft, see E. S. Farrow, *Gas Warfare*, 1920, pp. 166-73, for a technical discussion.

"At the second battle of Ypres," says Sir George Arthur, "the enemy so far scored as to catch both British and French unprepared for his evil strategem, and thereout sucked no small advantage. But in the end he had good reason to regret his recourse to a devilish device, for eventually the British beat him hollow both in the effective use of gas in the attack and in the efficacy of self-protective measures; whereupon, with sublime cynicism, the Germans pronounced for the abolition of gas as a weapon of war."¹

The dropping of gas bombs and poisoned sweets, etc.—The only official report of the dropping of poison-gas bombs in the great war appears to be that contained in the German *communiqué* of 23 October, 1916, which stated that five civilians had died and seven had become ill as the result of inhaling poisonous gases from bombs dropped by enemy airmen in Metz and the villages of Lorraine. It was reported unofficially in March, 1918, that a German aircraft dropped mustard gas bombs on the American artillery positions north-west of Toul.² There were persistent rumours during the war that gas bombs were being dropped by German aircraft, but "evidence on the point," says Major Lefebure, the gas poison expert, "is very scanty." Possibly some bombs charged with "Blue Cross" or sneezing gas may have been dropped, "but the war gave us no direct evidence of the successful use of gas and war chemicals from aircraft."³

There are on record various instances of the dropping by German and Austrian aircraft of poisoned and infected sweets and *confetti*. An outrage of this kind was reported by *The Times* correspondent at Bukharest on 30 September, 1916,⁴

¹ Sir G. Arthur, *Life of Lord Kitchener*, 1920, iii. 235. As regards the effectiveness of the British gas in Italy and its effect in hastening the end of the war there, see H. Dalton, *With British Guns in Italy*, 1919, pp. 205, 247.

² Reuter's Special Correspondent with the American Army in France, 18 and 24 March, 1918. See "Flying" for April, 1918, and *The Aeroplane*, 27 March, 1918.

³ Victor Lefebure, *The Riddle of the Rhine*, 1921, pp. 225, 226. Major Lefebure adds that the absence of confirmed evidence of the successful use of gas by aircraft in the great war "is no criterion as to its eventual importance." He foresees the future employment of air bombs with a "persistent lethal compound," when such a compound, suitable for use by aircraft, has been evolved. Even as things were, "mustard gas would probably have been superior to explosives for use by German aircraft on British cities" (p. 227). He quotes a forecast by Gen. Debeney, Director of the French College of Warfare, that gas will also probably be one of the best anti-aircraft munitions, "if with appropriate shells the air can be poisoned all around the attacking airplanes" (p. 181).

⁴ See *The Times*, 3 October, 1916. The report was denied officially by Berlin (see *The Times*, 14 October, 1916). See also Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 41, 42, for reports of the dropping of poisoned bon-bons in Roumania. *The Observer*, 19 November, 1916, contains a circumstantial account by a Scots lady of the dropping of poisoned sweets in Bukharest.

and the Russian and Roumanian official *communiqués* of 12 October, 1916, charged the enemy with dropping "poisoned sweets and garlic infected with cholera bacilli" at Constantza. In March, 1917, the Prefecture of the Somme issued a warning to the people of Amiens to avoid sweets dropped by German aeroplanes in the British lines.¹ In December, 1917, it was reported unofficially from Paris that German aircraft had dropped upon Calais small packets with an inscription in English stating that they contained soup-powders and giving instructions for the preparation of the soup; and that all families who took the soup had died.² In Italy the same inhuman practices were stated to have been resorted to by enemy airmen. As early as March, 1916, it was reported that Austrian aircraft had dropped poisonous sweets in Northern Italy³ and in May, 1917, that sweets containing cholera bacilli had been dropped at Codigoro, near Ferrara.⁴ As a result, the Commandant of the Italian Army Corps of Bologna addressed the following telegram to the anti-aircraft commander at Ferrara:—

"The Command is warned that the confetti dropped by Austrian aviators in the raid of 11 May have been analysed by the medical authorities of the University of Bologna and have been found to contain cholera bacilli; it is possible that further analysis may reveal the presence of other pathogenic germs.—(Signed), Gen. E. ESCARD."⁵

How far the various reports given above, whether official or unofficial, were examples of war propaganda, it is impossible to say.⁶ It is at all events certain that if such practices as those reported were really resorted to, the persons responsible were guilty of a grave offence against the laws of war.

"Flaming Onions."—Incendiary shells or bombs are in no wise prohibited, and the "flaming onions" which the Germans used in the late war were equally legitimate. These were large rockets of some phosphoric material which burst at the

¹ Reuter, Paris, 10 March, 1917, quoting from the *Petit Journal*. See also Lacroix, *Le Domaine aérien et la Guerre*, pp. 194-5.

² See *Daily Mail*, 17 December, 1917.

³ C. Lafon, *La France ailée en Guerre*, p. 202; see also p. 246. See also Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (21).

⁴ *The Times*, 24 May, 1917.

⁵ *Diario della Guerra d'Italia*, ii. 1302-03.

⁶ In the *Recueil des Actes de la Conférence de la Paix, Partie IV., Commission de la Conférence B. Questions Générales*, (2) *Commission des Responsabilités des Auteurs de la Guerre*, p. 113, some cases of the dropping of poisoned sweets by enemy aviators in Roumania are quoted; perhaps it is a fair inference that these were the only cases fully authenticated.

top of their climb, spread out into an umbrella-shaped curtain and sank slowly down; their purpose was to set fire to any machine in their path.¹ Their "ceiling" was apparently from 4000 to 6000 feet.² According to some observers they had hook attachments for catching the aircraft at which they were aimed.³ On at least two occasions machines were set ablaze by a flaming onion,⁴ but in general their effect was more moral than material.⁵ The R.F.C. pilots for the most part laughed at them, and one is said to have brought a flaming onion home in triumph on his machine, having caught it after the flames had died out.⁶ Sir Reginald Bacon records that, in April, 1917, "one of our bombing machines was hit behind the pilot's seat by one of these fire-balls, which burst and flared off the fuselage like a burning red liquid. No damage was done to the machine."⁷

The prohibition of instruments of warfare which cause unnecessary suffering.—The other great principle referred to in the opening paragraph of this chapter is of more modern growth than that which relates to the use of poison. It is, indeed, to be found in operation as a restrictive influence upon the cruelties of warfare, both in the practice of belligerents and in the reflection of that practice in the writings of jurists, during the last few hundred years, but its application to the particular means of injuring the enemy in which to-day it is of any practical importance is comparatively recent. Belligerents no longer use the primitive weapons or munitions which writers on international law were, and sometimes still are, at

¹ Vivian Drake, *Above the Battle*, 1918, p. 118; R. H. Reece, *Night Bombing with the Bedouins*, 1919, p. 61; A. J. L. Scott, *History of 60 Squadron*, 1920, p. 52.

² F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War*), 1923, p. 236, states that they rose to a height "above 5000 feet." Capt. Alan Bott ("Contact"), *An Airman's Outings*, p. 292, gives the height to which they ascended as 4000 to 6000 feet. Capt. G. F. Campbell, *A Soldier of the Sky*, p. 191, says they rose to 6000 feet. In an article in the *Daily Mail* of 3 April, 1918, "Paul" (Capt. Paul Bewsher) says that they rose to 10,000 feet in a few seconds.

³ Capt. A. C. Reid, *Planes and Personalities*, 1920, p. 89; Campbell, *loc. cit.*

⁴ The machine of Lieut. J. C. Courtney, Australian Flying Corps, was hit by a flaming onion on 7 April, 1918, near Fournes, and brought down in flames (Cutlack, *op. cit.*, p. 242), and another case in which a machine was set on fire by one is recorded by E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, p. 319.

⁵ W. A. Bishop, *Winged Warfare*, p. 69; A. C. Reid, *loc. cit.*

⁶ C. C. Turner, *The Struggle in the Air*, 1914-18, p. 175.

⁷ Sir R. Bacon, *The Dover Patrol*, p. 565; see also p. 541, *ibid.* "Flight Commander" (*Cavalry of the Air*, 1918, p. 72) says of the "flaming onion": "As a pyrotechnic display it was rather amusing, but its actual utility as a weapon I have never yet discovered." See in the same sense "Wings" (Captain, R.A.F.), *Over the German Lines*, 1918, p. 57.

pains to condemn. The rule that unnecessary suffering must not be caused by one's choice of the instruments of destruction means to-day, in practice, that explosive and expanding small-arms munition is banned. Attempts to enlarge the scope of the rule have been made without success. In 1868, a little before the Declaration of St. Petersburg was signed, the Prussian Government proposed that not only explosive and incendiary bullets should be banned but also various other new inventions for scientific destruction. Great Britain, fearing that any such limitation would deprive her of some device which would compensate for her inferiority in armed numbers, opposed the suggestion.¹ The attempt of Pope Innocent II. to secure the prohibition of high explosive shells was equally unsuccessful. In the last few years, flame-throwers and hand-grenades have been added to the weapons of war without giving rise to any suggestion that they should be declared illegitimate. The American troops used buckshot in the late war, and repudiated a German complaint that such ammunition was inhumane.²

Explosive, incendiary, and expanding bullets.—The international agreements prohibiting the use of explosive, incendiary, and expanding bullets are as follows:—

Declaration of St. Petersburg, 1868, by which "the contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes (about 14 oz.), which is either explosive or charged with fulminating or inflammable substances."³

Declaration of The Hague, 1899, by which "the contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions."⁴

¹ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1082.

² *Ibid.*

³ The following great Powers signed the Declaration: Great Britain, France, Italy, Austria-Hungary, Prussia and the North German Confederation, Russia. The Declaration did not require ratification.

⁴ The following great Powers have ratified or acceded to this Declaration: Great Britain, France, Germany, Austria-Hungary, Russia, Italy, Japan. It will be seen that the United States are not parties to either the Declaration of 1868 or that of 1899, but United States troops are considered, nevertheless, to be under the obligations imposed by both; both Declarations are quoted in the American official *Rules of Land Warfare, 1914*, with a cross-reference to Article 23 (e) of The Hague Rules, 1907 (by which the United States Government is formally bound), prohibiting the use of arms, projectiles, or material calculated to cause unnecessary suffering.

With these Declarations must be read Article 23 (e) of The Hague Rules for Land War, 1907, prohibiting the employment of "arms, projectiles, or material calculated to cause unnecessary suffering."

Although the Declarations of 1868 and 1899 and the Land Warfare Rules, 1907, are expressly limited to wars in which only contracting Powers are engaged, it must, nevertheless, be taken that the prohibitions which they announce are now accepted prohibitory rules of international law, independent of treaty obligation. This is shown by the fact that in the great war, although States (Serbia, Montenegro, Turkey) which were not contracting parties were engaged,¹ the principles of the two Declarations were, nevertheless, assumed on both sides to be applicable and complaints were made and denials or justifications put forward, on the basis of their being applicable. Reliance was not placed on the narrow legal ground that the Declarations were not binding formally.

The declarations of 1868 and 1899 and air warfare.—It must also be held that the Declarations apply to air warfare. The Declaration of 1899 is perfectly general in its terms and covers all arms. That of 1868 governs the conduct of military and naval troops, but it cannot be admitted that, because a particular State organises its air forces separately from its other arms, it is for that reason absolved from the obligations which the agreement imposes. The standard of international morality and the claims of humanity are not lower and less imperative in aerial than in other forms of warfare. Unless and until the restrictive rules applicable to the other arms are relaxed by international agreement for the purpose of air fighting, they must be held to be binding upon air forces.²

The question then arises whether the circumstances of air warfare are such as to make any modification of the existing rules necessary. The *onus* of establishing the necessity for a change rests upon those who advocate it. In considering the question, one must have regard to the events of the great war, and in particular to the fact that during its first two years air fighting was conducted without general resort to the use of either explosive or incendiary bullets. Isolated

¹ See Pillet, *La Guerre actuelle et le Droit des Gens* in *Revue de Droit Int. Public*, 1916, p. 21.

² The Declaration of St. Petersburg is stated in Fauchille-Bonfils, *Droit Int.*, ii. § 1440 (21), to be binding upon air forces, and a similar view is expressed by Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int. Public*, 1916, p. 523.

cases there were in which, almost certainly without high military authority, individual fighters made use of illegitimate projectiles of small calibre, but in general the terms of the two Declarations were observed until the autumn of 1916. From that time onwards the belligerents regularly used incendiary and to a smaller extent explosive bullets which were beyond all question ammunition prohibited under the terms of the Declarations.

Aircraft armament in 1914.—In the earliest stages of the war the armament of aircraft was of the most primitive kind. Fixed armament there was none. Airmen went into action either unarmed or armed only with revolvers, rifles, or *fléchettes* (as to which, see later). Sometimes bombs or grenades were carried and the airmen manœuvred their clumsy machines to obtain position for dropping them on one another.¹ French, British, and German flying services were all alike unprepared for real fighting in the air. Rifle, or carbine, and revolver were the normal equipment of the pilots of the R.F.C.² The R.N.A.S. were hardly better equipped: "the offensive weapons against other aircraft were both various and primitive, ranging from automatic pistols to rifles of various calibres, and 12-bore guns firing incendiary bullets, buck-shot, and even chain-shot."³ The French service appears to have been the first to adopt the *mitrailleuse* as aircraft armament, for as early as 10 September, 1914, some Voisin biplanes at Issy-les-Moulineaux were so equipped,⁴ and by 27 September, 1914, Pégoud had a *mitrailleuse* mounted upon his Blériot.⁵ The French airman

¹ See an account of such an incident by a German pilot named Werner in *La Guerre aérienne*, 3 January, 1918, p. 135. Major Kennedy-Cochran-Patrick, in a lecture at the Royal Aeronautical Society on 8 November, 1918, described how, in the early days of the war, "some (British airmen) attempted to throw rifle-grenades or bombs into a German machine from above, with no success whatever" (*The Aeroplane*, 27 November, 1918). J. T. B. McCudden (*Five Years in the R.F.C.*, p. 36) also refers to the use of hand-grenades in 1914 for dropping on enemy aircraft, and so does the French airman, André C.H.A., in his *Au-dessus des Batailles (Carnet de Guerre d'un Aviateur)*, 1917, p. 48.

² Sir F. H. Sykes, *Aviation in Peace and War*, p. 67. As to the early armament of British aircraft, see also Wedgwood Benn, *In the Side Shows*, p. 115, and Wing-Commander B. E. Smythies, "The German Air Force on the Western Front," in *Journal of the Royal United Service Institution*, February, 1924, p. 128. In *The Times History of the War*, chapter xxxv, published as "Part 18," in December, 1914, it is stated that carbines, revolvers, bombs, and air darts (steel *flèches*) are the weapons of aircraft; no mention is made of machine-guns. A case in which a British airman who had not even a gun put to flight a German airman is recorded by A. Corbett-Smith, *The Marne and After*, 1917, pp. 86-8.

³ Sir Reginald Bacon, *The Dover Patrol*, pp. 524.

⁴ Renaud de la Frégolière, *A Tire d'Ailes*, 1916, p. 50.

⁵ P. Bonnefon, *Le Premier 'As' Pégoud*, 1918, p. 68.

who recorded his experiences under the name of André C.H.A. tells us that by 24 September, 1914, he had a *mitrailleuse* when serving as observer in a two-seater and used it in action.¹ The French aircraft at Verdun were armed with *mitrailleuses* in November, 1914.² Dr. Sven Hedin, writing of his experiences during his visit to the German front between mid-September and 6 November, 1914, says: "The Frenchman [in an aeroplane] is often armed with a machine-gun for the benefit of his German colleague."³ It was some time, however, before the French air service was equipped fully with machine-guns, and throughout 1915 one finds references to the use of carbines in air combats.⁴ Gradually, however, the position as regards armament changed completely from what it had been at the beginning of the war, when, as an early French war pilot has described the situation, "the revolver, which they carried in case of being forced down within the enemy's lines, was at first the only weapon the flyers had; it was that or nothing. Later, followed the short musket (*le mousqueton*), which was hardly more effective, but it had the advantage of greater precision and of carrying farther. The first plane brought down with one of them was a Boche, and to Lieut. Frantz, in a Voisin plane, fell that honour. Afterwards we were armed with one machine-gun; soon after, with two, and later on, some planes carried small cannon."⁵

The original German aircraft armament was equally primitive. Gen. Von Hoeppner, who commanded the German flying service during the latter half of the war, states that in the first winter the German airmen were at a disadvantage as compared with the Allies. The enemy aeroplanes were

¹ André C.H.A., *Au-dessus des Batailles (Carnet de Guerre d'un Aviateur)*, 1917, p. 29.

² Mortane et Daçay, *Histoire de l'Aviation allemande*, in *La Guerre aérienne*, 28 February, 1918, p. 263. G. Crouvezier, *L'Aviation pendant la Guerre*, 1917, p. 116, mentions the use of *mitrailleuse* in an air combat on 5 October, 1914. See also paper by G. Menier, in *L'Aéronautique pendant la Guerre mondiale*, p. 12.

³ Sven Hedin, *With the German Armies in the West*, Eng. trans., 1915, p. 365.

⁴ See, for instance, Bonnefon, *Le Premier 'As' Pégoud*, pp. 80, 84, 94; *La Guerre aérienne*, 11 January, 1917, p. 135; 1 February, 1917, p. 179; 17 January, 1918, p. 159; Fonck, *Mes Combats*, pp. 24-5 (giving an account of an air combat, in July, 1915, in which Fonck used a carbine); D. Vincent, *La Bataille de l'Air*, 1918, p. 13 (stating that Pelletier d'Oisy and his observer, armed with a carbine, shot down an Albatross in the spring of 1915). In the British flying service, observers sometimes fought with Browning pistols even at the beginning of 1917: see article by Lord Northcliffe (writing from Canadian H.Q. in France) in *The Times*, 2 February, 1917.

⁵ Lieut. H. Farré, *Sky Fighters of France*, Eng. trans., 1919, p. 18, quoting statement by Lieut. Mouchard, a pioneer war pilot.

equipped with machine-guns, he states, in October, 1914; the German airmen had only pistols and carbines with which to meet them.¹ Oberleutnant Siegert, again, states that the German airmen were armed only with automatic pistols fitted with stocks. He himself had only a carbine when he flew to Belfort in August, 1914. He states that he fixed to this carbine a gramophone horn in order to make an opponent fancy that he had a weapon of enormous calibre and thus to terrify him.² Even in September, 1915, a German Albatross, which was entirely unarmed except for the observer's revolver, was brought down near Calais;³ and in the following month another Albatross, which had no machine-gun nor any fitting for one, was captured; the observer complained that a carbine was his sole means of defence.⁴

Air darts or fléchettes.—Reference has been made above to *fléchettes* and it is desirable to explain what these were. They were small arrows of steel which were dropped in bundles of fifty at a time from aeroplanes upon ground targets or observation balloons.⁵ They were used on both the Allies' and the German sides, but were originally an Italian invention, having been first used in Tripoli in 1911-12.⁶ In the great war, they were apparently first used by the French; those used by the Germans were, in some instances at any rate, inscribed "Invention française, fabrication allemande."⁷ They were known in the French service as either *fléchettes* or "balles Bon"⁸ in the German service as *Fliegerpfeilen*,⁹ in the Italian as *freccie*,¹⁰ and in the British as "darts." British Admiralty *communiqué* of 26 April, 1916, stated that our aircraft dropped bombs and *darts* (but without success) upon two Zeppelin airships off the east coast of England. In the very early days of the war the

¹ Hoepfner, *Deutschlands Krieg in der Luft*, 1921, pp. 17, 23. References to the use by German airmen of carbines against French aircraft equipped with *mitrailleuses* may be found in Mahlke, *Hoch in den Lüften*, 1916, pp. 51-2, 136-7.

² Siegert in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 116.

³ See *Flight*, 17 September, 1915.

⁴ *Ibid.*, 22 October, 1915.

⁵ A photograph of three *fléchettes* may be seen in *Deutsche Luftfahrer-Zeitschrift*, 25 November, 1914, and a drawing of one, actual size, in G. Crouvezier, *L'Aviation pendant la Guerre*, 1917, p. 97.

⁶ See F. Savorgnan di Brazza, *La Guerra nel Cielo*, 1915, p. 204. At p. 202 of the same book a picture is given of a *freccia da aeroplani*.

⁷ See paper by Capt. Partridge in *La Vie aérienne*, 13 February, 1919, p. 108.

⁸ See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 76.

⁹ See Stoffmeister in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, p. 10.

¹⁰ See Gen. Cadorna's report of 15 December, 1915, in *Diario della Guerra d'Italia*, i. 623.

pilots tried to drop *flêchettes* into the enemy pilot's machines ; ¹ there is no record of their having on any occasion succeeded in doing so. Enormous quantities of them were dropped by French airmen ; one, Adjudant Varcin, dropped 18,000 in one day in March, 1915.² They were being dropped as late as January, 1917.³ The wound which they made was, says M. Lafon, usually fatal, being narrow but very deep. "A man is often even cut clean through (*traversé de part en part*)."⁴ The deadly nature of the wound which they inflicted was described in a report by Dr. Volkmann of Munich in November, 1914.⁵ A German general, Von Meyer, was transfixed and killed by one in December, 1914.⁶ Dr. Sven Hedin, writing at the German front in September, 1914, says : "A soldier was struck by one of those horrible steel arrows which the airmen let fall from a height of 2500 metres and which pass right through a horse or bury themselves in the ground after having struck a man on the head. They travel at the rate of a rifle bullet, but weigh more. At Grandpré, a captain was killed a few days ago by one of these arrows."⁷ In general, however, the effect of the *flêchettes* appears to have been negligible. Brindejone des Moulinais states in a letter of 5 November, 1914 : "The *flêchette* does not seem to have struck the Boche's imagination very much, but he has a holy terror of our bombs."⁸

The *flêchette* cannot be considered to have been an illegitimate munition. No rule of warfare can be quoted as forbidding its use ; a belligerent is entirely at liberty, if he so desires, to revert at any time to the use of bows and arrows (or, for that matter, of Maglemose harpoons) and to substitute for the bow a high-speed flying machine. Whether it is militarily advantageous to do so is another matter. Professor Rolland, who has considered the question of the legitimacy

¹ J. T. B. McCudden, *Five Years in the R.F.C.*, p. 45.

² See *La Guerre aérienne*, 20 September, 1917, p. 709 ; see also the citation of Adjudant Pierre Violet in *La Guerre aérienne*, 12 July, 1917, p. 556.

³ See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 222.

⁴ C. Lafon, *Les Armées aériennes modernes*, 1916, p. 245.

⁵ See *Flight*, 27 November, 1914 ; F. S. di Brazzà, *La Guerra nel Cielo*, 1915, p. 203.

⁶ See C. Lafon, *op. cit.*, p. 232 ; *Daily Mail*, 11 December, 1914, quoting a Central News telegram from Basle, 9 December, 1914 ; *The Aeroplane*, 9 December, 1914, quoting the Bavarian press ; F. S. di Brazzà, *La Guerra nel Cielo*, 1915, p. 203.

⁷ Sven Hedin, *With the German Armies in the West*, Eng. trans., 1915, p. 166.

⁸ Quoted in *La Guerre aérienne*, 19 April, 1917, p. 362. "A whole canister of them [*flêchettes*]," says Sir W. Raleigh (*The War in the Air*, p. 343), "was probably less formidable than a bomb."

of *flèches*, arrives at the conclusion that their use was perfectly legitimate and describes the German attempt to fix upon the French the responsibility for the introduction of a prohibited munition as a "*prétention peu fondée*."¹

The problem of attack upon balloons and airships.—Even when all or practically all machines had machine-guns, the technical problem of attack upon lighter-than-air craft remained unsolved. The difficulty was that the ordinary machine-gun bullet was almost innocuous against such aircraft; it simply pierced the gas-bag, went through it, and failed to do it any real damage. There were two possible ways in which this difficulty could have been surmounted.

The use of cannons in aircraft.—The first was by mounting upon aeroplanes a cannon firing a real shell. The projectile would, in that case, have been in excess of 400 *grammes*, and would, therefore, have been within the letter of the law. To contend that it would have been a breach of the spirit of the law is to open a very debatable question, but it cannot at any rate be held that there was, or is, any specific rule of international law prohibiting the use by aircraft of ordinary shells against other aircraft. The laws of warfare draw a hard and fast line between the "large" and the "small" shell and, that line having to be drawn somewhere, they draw it at the weight of 400 *grammes*. The *raison d'être* of the distinction is that the ordinary shell, fired by a cannon, is intended to kill or disable a number of men, whereas the "shell" fired by a rifle or machine-gun is aimed at, and kills or disables, only one; and the military advantage of mutilating the individual in the latter case, as compared with the disabling effect of the ordinary bullet, is regarded as incommensurate with the suffering caused. On the other hand, although a shell may kill or mutilate—and mutilate horribly—only one man, it may also destroy a score, and the suffering of the individual is held to be compensated by the possible "bag" of a projectile of widely radiating effect. Applied to air fighting, the principle underlying the distinction referred to may not be altogether logical, but it is at all events an existing and well-established distinction which cannot be held to be inapplicable until it has been proved to require modification in air warfare and has been relaxed for that purpose by express international agreement. If any belligerent may at any time, at his own discretion, set

¹ Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int. Public*, 1916, pp. 523-4.

aside a law of war because he considers it inappropriate to new conditions—and many conditions are new in every succeeding war—there is an end of all restrictive rules whatever.

Experiments with aircraft cannons in the great war.—The plan of mounting cannon on aircraft was at all events tried. Quite early in the war the French equipped the Voisin biplanes with a 37 mm. gun,¹ and the *avions-cannons* so equipped did some effective service. "We used armed aeroplanes, supplied with a revolver-gun of 37 mm. calibre: a redoubtable weapon for attacking Zeppelins," wrote M. Blanchon early in 1917.² Fonck had a Spad armed with a 37 mm. gun and brought down with it eleven enemy machines.³ Guynemer was also using one in the machine which he calls in his diary "*my aeroplane*," in the summer of 1917, and brought down at least one machine (a D.F.W.) with it; it is not clear from his diary whether his other victims at this time were shot down by machine-gun fire or by his shell-firing gun.⁴ In October, 1915, a German aircraft with two machine-guns and a small cannon is stated to have been brought down on the Russian front.⁵ Major Bishop states that the Germans began to use small cannons firing a 1 lb. shell in their two-seater machines, in 1917,⁶ but, before that date, cannons appear to have been mounted on German aeroplanes; for in an official report published in the *Kölnische Volkszeitung* of 27 February, 1917, it is stated that not only machine-guns but quick-firing cannons of a calibre of two centimetres were used in German aircraft.⁷ An experimental Caproni three-engined machine with a quick-firing cannon was tried by the Italian air service at Vizzola-Ticino in December, 1914.⁸ A two-pounder shell-firing cannon was tried for a time in the British flying service in the winter of 1917-18, but

¹ G. Menier in *L'Aéronautique pendant la Guerre aérienne*, 1919, p. 12; C. Lafon, *La France ailée en Guerre*, p. 93. A photo of an early *avion-canon* may be seen in the *American Air Service Journal*, 5 September, 1918.

² G. Blanchon, *The New Warfare*, Eng. trans., 1917, p. 125.

³ Fonck, *Mes Combats*, 1920, p. 230. Major C. J. Biddle (*The Way of the Eagle*, 1919, p. 265) flew one of these *avions-cannons* with a 37 mm. gun towards the end of the war. He states that only a few of them were in use, Guynemer, Fonck, and Deullin, the great French "stars," being the chief users of them. His own 37 mm. gun fired either a large charge of shot-gun slugs or an incendiary-explosive shell.

⁴ Mortane, *Guynemer, the Ace of Aces*, Eng. trans., 1918, pp. 237-8.

⁵ C. Lafon, *op. cit.*, p. 89.

⁶ Bishop, *Winged Warfare*, p. 237.

⁷ See translation of the report in *La Guerre aérienne*, 27 December, 1917, p. 118.

⁸ C. Lafon, *Les Armées aériennes modernes* 1916, p. 263.

apparently only against ground troops and their material.¹ In the Naval Air Service, in the summer of 1917, the Davis gun was tried on a Handley-Page machine; it fired simultaneously at each side, in order to neutralise the recoil, a 6 lb. shell being fired downwards and a charge of buckshot from the other end upwards. It was used for a short time for attacking ammunition dumps, but was soon abandoned, it being considered that the equivalent weight of bombs produced more satisfactory results.²

The plan of mounting cannon upon aircraft was not, upon the whole, a success. The Voisin with its 37 mm. gun was so lacking in speed and climb that it was at the mercy of the swift pursuit (fighting) aeroplanes.³ M. Lafon states that it was found that "against ordinary aircraft, which fly at a height of about 4000 to 5000 metres over a defended region, the gun aircraft (*avions-cannons*) are quite powerless. These heavy machines can rarely exceed an altitude of 3000 metres. Save in exceptional cases, their cannon cannot hit the light aircraft which fly over them, presenting a tiny and shifting target."⁴

It was found, moreover, that, with the projectiles which were turned out by mass production, there was always the danger of premature explosion and of consequent injury to the aircraft mounting the cannon.⁵ But the greatest objection was that the projectiles fired from a cannon were not sufficiently sensitive to explode immediately on contact with the gas-bag of a balloon; and it was against observation balloons that the cannons were mainly intended to be used.⁶

The search for an incendiary bullet.—Some alternative method of destroying lighter-than-air craft had thus to be devised, and the natural course was to endeavour to produce a bullet or small projectile which could be fired from machine-guns. Already on 2 October, 1914, Mr. Churchill had addressed a minute to the Directors of Naval Ordnance and the Air Division of the Admiralty drawing attention to the need for incendiary bullets.⁷ Experiments for the purpose in view

¹ "Night Hawk," M.C., *Rovers of the Night Sky*, 1919, pp. 62-75.

² Sir R. Bacon, *The Dover Patrol*, p. 569. A photo of the Davis gun will be seen in H. Woodhouse, *Textbook of Military Aeronautics*, 1918, p. 54. An aircraft gun firing from both ends simultaneously is described by A. Russell Bond, *Inventions of the Great War*, p. 145.

³ B. A. Molter, *Knight of the Air*, p. 127.

⁴ C. Lafon, *La France ailée en Guerre*, p. 35.

⁵ Woodhouse, *Textbook of Military Aeronautics*, p. 51.

⁶ See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 137-8.

⁷ Winston Churchill, *The World Crisis*, 1911-14, p. 318.

proceeded in both England and France during 1915 and 1916. Navarre has recorded his experiences with an experimental incendiary bullet of (apparently) a large kind, fired from an old "Gras" rifle, in the spring of 1915.¹ Sir Reginald Bacon states that in the summer of 1916 there was still no bullet that would set fire to a kite-balloon;² but just about then the search for one succeeded. It was in the autumn of 1916 that the problem was solved. It was solved by developing the already existing "tracer" bullet.

Tracer ammunition.—The "tracer" bullet, as its name implies, was one intended to enable the firer to see the path of his bullet. It was an ordinary machine-gun bullet with a small charge of phosphorus at the base, and was, indeed, often referred to in the German service as *Phosphormunition* or *Phosphorgeschosse*,³ although the terms *Leuchtschurmunition* and *Rauchschurmunition* were also employed.⁴ Boelcke indicates the purpose of the tracer ammunition when he speaks of it as *Munition zum Kenntlichmachen der Geschossbahn*.⁵ Its purpose was not to set the target attacked on fire, but to correct markmanship.⁶ The phosphorus burned for a short time only and had usually become extinguished before the bullet hit its mark.⁷ There is, indeed, on record a case in which an American pilot is stated to have set a German Rumpler aeroplane on fire with a tracer bullet,⁸ but—unless an incendiary bullet was really used—such

¹ Navarre, *Mes Aventures guerrières et autres*, in *La Vie aérienne*, 21 August, 1919, p. 534.

² Sir R. Bacon, *The Dover Patrol*, p. 546.

³ See, for instance, Tutschek, *Stürme und Luftsiege*, 1918, pp. 115, 165-6; Udet, *Kreuz wider Kokarde*, p. 91.

⁴ See, for instance, *Das Fliegerbuch*, 1918, pp. 45, 141; Tutschek, *op. cit.*, p. 101; Buddecke, *El Schahin*, 1918, p. 91.

⁵ Boelcke, *Feldberichte*, 1916, p. 76.

⁶ W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 13.

⁷ Major L. W. B. Rees, *Fighting in the Air*, 1916, p. 12. An American pilot says: "I had been hoping to get a balloon, so had mounted an extra-size balloon gun on one side and filled the other gun with nothing but incendiary ammunition, not so reliable a combination, but the only thing for balloons, as ordinary armor-piercing and tracer ammunition will not set them on fire" (Major C. J. Biddle, *The Way of the Eagle*, 1919, p. 226).

⁸ Lieut. Hamilton Coolidge, 94 Squadron, U.S.A., wrote on 7 July, 1917, of an attack on a German Rumpler: "I shall never forget the sensation of seeing a stream of flaming tracer bullets from my guns sink into its body, and almost immediately flames bursting out as we dove [dived] at great speed through the air" (*New England Aviators*, 1919, i. 62). There may possibly have been other cases of the kind, for Lieut. W. Noble (*With a Bristol Fighter Squadron*, 1920, p. 135) says: "The ordinary tracer bullet seldom causes a balloon to burn, and so a special bullet [i.e. the Buckingham] is employed." In *The Salonika Front*, by W. T. Wood and A. J. Mann (1920) it is stated (p. 176) that on 1 May, 1917, an observation balloon of No. 27 K.B. Company was set on fire by a German airman with "tracer" bullets; it is possible that incendiaries of the Buckingham type are meant.

an incident was altogether exceptional. Ordinarily the tracer bullet differed in no way in its effect from the standard machine-gun bullet in the various armies; and it was used by ground troops as well as by airmen. It could not be considered to constitute an infringement of the Declarations of St. Petersburg and The Hague.

The incendiary bullet of 1916.—The incendiary bullet which was developed from it was an altogether more dangerous munition. It contained at the base an inflammable charge, which burnt for a longer time than that of the ordinary tracer, and its nose was soft, so that on striking its object it flattened out and made a much larger perforation than that of the standard bullet. It was thus doubly a prohibited munition—under the Declaration of 1868 as being one charged with an inflammable substance, under the Declaration of 1899 as being liable to flatten easily on contact with the human body. The new bullet was usually known as the “soft-nosed” or “flat-nosed Buckingham,” and appears to have been brought into use first in the British service. “It was the British who originated aeroplane attack with incendiary bullets on captive balloons.”¹ The losses of the German balloons as a result of the adoption of the new bullet at once increased enormously.² It was only against such targets and other lighter-than-air craft that its use was authorised. In the nature of things, however, pilots carrying this kind of ammunition occasionally used it, either accidentally or intentionally, against hostile aeroplanes.

Questionable legitimacy of its use recognised.—That its use against heavier-than-air craft was of questionable legitimacy (as, indeed, it was) was evidently felt both by the authorities responsible for its issue to the flying services and by the airmen themselves. Capt. A. C. Reid, speaking of the “flat-nosed Buckingham,” says: “The only drawback

¹ “G. S. O.” *G.H.Q.*, 1920, p. 215. Stottmeister (in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, p. 10) says that the Allies first used incendiary machine-gun ammunition (*M.-G. Brandmunition*) to destroy observation balloons.

² It also had the effect of practically stopping the airship raids upon England. “The menace of the Zeppelins, which had already stirred indignation in breasts unmoved by dangers at the front, had been met when on 2 and 23 September, 1 October, and 27 November [1916] successive raiders were destroyed with all their crews by incendiary bullets from aeroplanes” (A. F. Pollard, *A Short History of the Great War*, 1920, p. 237). See also Rawlinson, *The Defence of London*, 1923, pp. 121, 128, where it is stated that the efficiency of “the deadly bullet,” “the new incendiary bullet,” when first used against the raiding airships in September, 1916, led the Germans to undertake exhaustive modifications of their airships for the purpose of increasing vastly the altitude at which they flew.

was that if you had a forced landing and the enemy found you using flat-nosed ammunition they had a habit of shooting you there and then, as its use was considered inhuman owing to its spreading on impact and consequently resulting in a very nasty wound. Therefore, when detailed for captive-balloon strafing one was issued with a special pass which stated that this sort of ammunition was being used against observation balloons only, and that Lieut. So-and-So had been detailed for that purpose. This could then be shown if by any chance one was forced to land in enemy territory and one's ammunition queried."¹ Similarly, Lieut. Walter Noble says: "This special ammunition is not used against enemy aeroplanes; and when taken up for use against balloons a card, signed by the G.O.C. the R.A.F. in the Field, is pinned to the cockpit of the user, certifying that it is for use against balloons only. There is no doubt as to the necessity for this. One of these bullets if lodged in one's flesh would, it is said, proceed to burn away all flesh and bone in its vicinity."²

"The thought came to me," wrote an American officer who crashed in No Man's Land, in June, 1918, "that if I were nearer the German lines than the French, I had better get rid of the incendiary balls in my machine. If you are captured with incendiaries they shoot you without trial." He goes on to tell how he hid the cartridges in an unfinished grave, under the dead body of a German soldier.³

Surprise and consternation in German air service.—In truth the precaution was not unnatural. The new development which the adoption of incendiary ammunition by the Allies represented appears to have come as a complete surprise to the Germans. When the Buckingham bullets were used not only against observation balloons, but also against aeroplanes, their anger and consternation found vent in bitter complaints and threats. The German flying men, states a neutral correspondent who was then in Germany and who mingled with the service airmen,⁴ had prided themselves on using the regular rifle ammunition in their machine-guns. Hitherto the Allies had done the same. Now, suddenly, in the German view, they had ceased to "play the game." Some of the crack German airmen were shot down in flames; among others, the famous

¹ Capt. A. C. Reid, *Planes and Personalities*, 1920, p. 132.

² W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 135.

³ Quoted in Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 123.

⁴ H. B. Swope, *Inside the German Empire*, 1917, pp. 192-3.

"Ace," Lieut. Von Wintgens, who was killed on 25 September, 1916, through the piercing of his tank by an incendiary bullet.¹ "The German military authorities resented the new tactics and talked of making an example of captured Englishmen who had employed what Germany held to be an unfair and illegal method."²

The case of Lieuts. Walker and Smith.—They considered the question of bringing to trial by court-martial two young British airmen—Lieut. Ronald Walker, R.F.C., and his observer, Lieut. C. Smith, West Yorkshire Regiment—who had been captured on 25 August, 1916, and were found to be in possession of the new ammunition. They had emptied their cartridges overboard on seeing that they must make a forced landing on the German side, but some cartridges still apparently remained in their two Lewis guns. Mr. Swope, by warning Mr. Gerard, the American ambassador, was instrumental in securing a longer and more cautious consideration of the matter by the German authorities than, probably, it would otherwise have received. Possibly through the same channel the danger in which they were placed became known in England. At all events, Col. Norton Griffiths addressed to Mr. Lloyd George a question in the House of Commons on 17 October, 1916, in regard to an alleged pending court-martial, and received a reply to the effect that, while the Army Council had no information as to a court-martial, it was probable that some officers captured by the Germans had in their possession tracer bullets used for range-finding. Mr. Lloyd George added that "cartridges with explosive bullets were found in one of the German airships brought down in this country." The reply, it will be seen, implied that tracer and not incendiary bullets were in question, which was, perhaps, the genuine impression of the authorities; and, if the reference to the explosive bullets found in the German airship omitted to add that these bullets were almost certainly carried to destroy the airship in the event of a descent in enemy ground, that was a justifiable omission in the conditions existing at the time. In the event, Lieut. Walker and Lieut. Smith were not brought to court-martial. They were kept at Cambrai for a long time, instead of being sent to a prisoners' camp in the ordinary routine, while their case was considered, but they themselves were unaware until a considerable time later that any question of bringing them to

¹ See *La Guerre aérienne*, 23 November, 1916, p. 32.

² Swope, *op. cit.*, p. 193.

trial was in contemplation. The charge against them was simply dropped.¹

General use of incendiary bullets after 1916.—The French, who had already adopted the British Vickers machine-gun (encountered sometimes under the strange title of "le Wickers" in the French memoirs, in which one also meets occasionally the Sopwith "Pup" transformed not altogether unhappily into "the Pop"), at once adopted also the soft-nosed Buckingham bullets. The *Notes d'un Pilote disparu* speak of a French pilot's using Buckingham ammunition to shoot down a German aircraft in flames.² In a letter of 29 July, 1916, Dorme speaks of an air combat the day before, in which he brought down a large German aeroplane: "I had incendiary bullets," he says, "and had the *chic* spectacle of seeing the Boche burst into flames."³ After 1916, says Commandant Féquant, the Le Prieur rocket, which had hitherto been usually employed to destroy the German *Drachen*, was replaced by the incendiary bullet.⁴ The new ammunition was, indeed, freely used by all the combatants from the later part of 1916 onwards. One finds references to air combats in which incendiary bullets were used on both sides. Thus, Capt. A. R. Brooks, 22nd Aero Squadron, U.S.A., describes a fight with the Richthofen "Circus" in which both the German and the American airmen were using incendiaries,⁵ and Fonck tells of another (on 17 March, 1917), in which he and a fellow-pilot engaged five German machines and incendiary bullets were used on both sides.⁶ One finds

¹ The information here given was very courteously supplied to the writer by Capt. Ronald Walker himself. The reference to the case in Garner, *Int. Law and the World War*, i. 264, is not quite accurate: the date was October, 1916, not October, 1917; the complaint was of the use of incendiary, not of tracer, bullets; and no actual charge was ever brought. It may be added that the threat of being punished for possessing forbidden ammunition was made also in other cases: against Lieut. Cyril Ball, R.A.F., when he was brought down within the German lines in possession of "explosive" (undoubtedly Buckingham) bullets (see his account in the *Daily Mail*, 21 December, 1918); and against a German pilot who had a forced landing near Verdun and was found to have "explosive" ammunition (see J. R. McConnell, *Flying for France*, 1917, pp. 89-91). In neither case was the threat carried out.

² Marc, *Notes d'un Pilote disparu*, 1918, p. 124.

³ Quoted in *La Guerre aérienne*, 28 February, 1918, p. 261. He also speaks of using *balles incendiaires* in a letter of 11 July, 1916, quoted in *La Guerre aérienne*, 21 February, 1918, p. 246.

⁴ Féquant in *L'Aéronautique pendant la Guerre mondiale*, 1919, p. 46. See also De Chavanges, *De Guynemer à Fonck*, 1920, pp. 34, 140; and A. J. L. Scott, *History of Sixty Squadron*, 1920, p. 21.

⁵ Letter quoted in *New England Aviators*, ii. p. 12. Capt. Illingworth (*Fly Papers*, 1919, p. 43) says that a machine of his squadron was attacked by the Richthofen "Circus" in April, 1917, with incendiaries.

⁶ Fonck, *Mes Combats*, 1920, p. 78; he mentions the use of incendiary bullets in other fights also (see pp. 129, 190, 196).

frequent reference in the unofficial records of the combats of the American airmen to the use of incendiary ammunition.¹ That it was used also in the Russian service is shown by the Russian official *communiqué* of 7 October, 1916, which states that Lieuts. Orloff and Yanchenko shot down with incendiary bullets an enemy aeroplane near Zlota Lipa. The German practice of using incendiary bullets in aircraft machine-guns was admitted in an official report published in a German newspaper on 27 February, 1917.² The change from the earlier practice of employing only the regular service ammunition was as rapid as it was regrettable.

The use of explosive bullets in the great war.—There had, it is true, been isolated cases even before July, 1916, of the use of irregular ammunition. M. Mortane states that three French airmen were attacked in June, 1915, by German pilots using explosive bullets.³ References to the use of explosive bullets during 1916, 1917, and 1918 are fairly frequently found, both in the official reports and in unofficial records. The Russian *communiqué* of 17 July, 1916, stated that the airman Lieut. Kovenko, had been wounded by an explosive bullet in the stomach. The British official explanations of the awards to Capt. F. M. F. West, V.C., and to Flight Sub-Lieut. W. E. Flett, D.S.C., stated that these officers had displayed special gallantry in air combats in which the former had one of his legs partially severed by an explosive bullet and the latter had been attacked with similar ammunition, his gun-layer being severely wounded.⁴ It was officially announced in Vienna in May, 1917, that the Austrian Lieut. Von Weinmann had been mortally wounded by an explosive bullet in an air combat on 6 May, 1917.⁵ Dorme was wounded by an explosive bullet in the arm in December, 1916,⁶ and the wounding or killing of other French airmen by

¹ See, for instance, Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 97, 121, 127, 248, 265; Rickenbacker, *Fighting the Flying Circus*, 1919, pp. 172, 270; *New England Aviators*, i. 64; P. A. Rockwell in *La Guerre aérienne*, 13 December, 1917, p. 76.

² See *La Guerre aérienne*, 27 December, 1917, p. 118, quoting an extract from the *Kölnische Volkszeitung* of 27 February, 1917.

³ Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 137.

⁴ See Turner, *The Struggle in the Air, 1914-18*, p. 232; Sir A. Montgomery, *The Story of the Fourth Army*, 1919, p. 299; *London Gazette*, 12 May, 1917.

⁵ See *La Guerre aérienne*, 25 July, 1918, p. 596, quoting the *Neue Freie Presse*, 11 May, 1917.

⁶ See *La Guerre aérienne*, 23 August, 1917, p. 647; 30 August, 1917, p. 670; and 9 May, 1918, p. 422, where Dorme's *carnet de vol* of 20 December, 1916, is quoted: *Bléssé au bras droit par les éclats d'une balle explosive.*

similar bullets is also on record.¹ Various American airmen—Clyde Balsley, Kiffin Rockwell, Philip Benney, Vernon Booth, Alan Winslow—are stated to have been killed or wounded by explosive bullets.² Major Bishop states that similar bullets—which he terms “ungentlemanly missiles”—were used by the German airmen against the Royal Flying Corps in March and April, 1917.³ Lieut. Henkelburg states that he was attacked by an English airman in Palestine with *Explosivgeschosses*.⁴ In July, 1918, the French Government issued a report that a Fokker aeroplane, D. 2371, had been captured and found to be fitted with two Spandau machine-guns, one of which was fed with cartridges of the incendiary type and the other with bullets which exploded on contact. The message added that the discovery proved that “former orders have been abrogated and that Germany has decided once more to violate international law.”⁵

Confusion between different types of bullets.—Seeing that the Allies had themselves for two years been using incendiary ammunition, which is equally banned with explosive bullets, one must confess that this report was hardly quite fair. It gives, indeed, the key to much that is puzzling in the reports of the use of explosive bullets. One is justified in questioning the truth and sincerity of many of these. War propaganda must have been at the bottom of some of them. In others there was probably a confusion between incendiary or even tracer

¹ See the references to the killing or wounding of Lieut. Jannes in *La Guerre aérienne*, 4 July, 1918, pp. 549-50; of Corporal Claveau, *id.*, 1 August, 1918, p. 605; of Capt. Lahouille, *id.*, 29 August, 1918, p. 668; of Adjutant Robillot, *id.*, 31 May, 1917, p. 463; of Commandant Fuzier, *id.*, 13 September, 1917, p. 692; of Corporal Narisi, *id.*, 20 September, 1917, p. 714. See also Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 161, for the case of Enseigne de Vaisseau Jean Roulier, who was killed in an air combat with an Austrian seaplane near Trieste on 15 August, 1916. “According to medical evidence, Enseigne de Vaisseau Roulier was killed by a machine-gun bullet, undoubtedly explosive, which entered his back near the vertical column, a little above the kidneys.” In Chavagnes, *De Guynemer à Fonck*, p. 108, it is stated that the French airman Guignet was wounded by an explosive bullet in July, 1916. H. Bordeaux (*Guynemer, Knight of the Air*, Eng. trans., p. 198) says that Capt. Heurtaux, commander of the “Storks,” was wounded by an explosive bullet on 3 September, 1917.

² See as to these cases Hall and Nordhoff, *The Lafayette Flying Corps*, i. 24, 29, 108, 121, 139, 409, 501; ii. 148; C. D. Winslow, *With the French Flying Corps*, pp. 160-1; Mortane, *Special Missions of the Air* (Eng. trans.), p. 104; J. R. McConnell, *Flying for France*, 1917, pp. 41, 95.

³ See Bishop, *Winged Warfare*, pp. 62, 86, 253.

⁴ Henkelburg, *Als Kampfflieger am Suez-Kanal*, 1917, p. 81.

⁵ See the report quoted in *Flight*, 11 July, 1918. A Halberstadt captured intact by the Australian airmen on 9 June, 1918, was also found to be carrying both incendiary and explosive ammunition (F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 275).

bullets, both of which contain some inflammable material but do not explode, and explosive ammunition, which is really a small shell. The airmen themselves do not appear always to have been quite clear as to the difference. Lieut. Molter confuses incendiary and tracer ammunition, and, after dividing the categories of bullets into ordinary, incendiary or tracer, perforating (for use against metal and not illegitimate) and explosive, speaks in another place of "incendiary explosive bullets."¹ The officer who writes under the name of "Flight" states that each "drum" of bullets contained tracer, explosive, and ordinary ammunition,² whereas it is quite certain that incendiaries and not explosives were the second constituent. Capt. G. F. Campbell is still more inexact, for he confuses incendiary and tracer ammunition; he states that early in 1916 (when incendiaries had not been introduced), "spying what looked like some new stacks of grain in a field, I released at them the remainder of the cartridges in my gun, the same being of the incendiary type."³ The same mistake is made by an American officer who was at once an aviation and a gunnery expert. He speaks of the incendiary bullet as if it were a tracer and quite permissible, while condemning the explosive as being "expressly forbidden by the laws of war."⁴ As a matter of fact both explosive and incendiary bullets were forbidden by the laws of war. When one reads of "explosive" bullets that made "a hole as big as a silver dollar,"⁵ it is a fair inference that an incendiary bullet which flattened on contact is meant. Major C. C. Turner also clearly refers to incendiary bullets when he says that "with the general introduction of tracer or explosive bullets for use in machine-guns the deflector propeller was doomed."⁶ Even the Italian higher command appear to have confused the different kinds of ammunition; an order by Gen. Cadorna referred to the use by the Austrian troops of *proietelli esplodenti o dum dum*,⁷ whereas, if

¹ B. A. Molter, *Knights of the Air*, pp. 124-6, 198.

² "Flight," *The Flying Yankee*, 1918, p. 20; he refers to British ammunition.

³ G. F. Campbell, *A Soldier of the Sky*, p. 129.

⁴ Major H. L. Muller, *Manual of Military Aviation*, 1918, p. 264.

⁵ Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 259.

⁶ C. C. Turner, *The Struggle in the Air*, p. 39.

⁷ *Diario della Guerra d'Italia*, ii. 315. It is possible that some of the bullets which are stated to have been expanding or dum-dum were really ordinary bullets which broke up on contact with some hard obstruction. This was probably the case in an instance recorded by Immelmann (*Meine Kampfzüge*, 1917, pp. 46-7) as occurring in June, 1915, when it is quite certain that the English airmen had no explosives nor incendiaries. He says: "Only one shot grazed the main girder (*Hauptholm*), and that without snapping it. The beam on which the motor is

the complaint was that both explosive and expanding bullets were being employed, "and" would presumably have been used instead of "or."

Use of explosive bullets rare.—That there was some small and strictly localised use of explosive bullets is probable, but they were never used in the same wholesale fashion as were the incendiary bullets in the last two years of the war. There is some evidence that explosive ammunition was used by our aircraft for home defence but not, apparently, at the front or, at any rate, beyond the German lines.¹ One of these bullets—the "Pomeroy"—stated to have been used for the defence of London, was described in an English newspaper shortly after the end of the war.² All the evidence goes to show, however, that the cases in which true explosive bullets were used in the actual battle zones were very rare. Only a few instances of the use of such ammunition by German and Austrian (ground) troops are quoted in the official record of war crimes prepared in connection with the peace conference.³

The position at the end of the war.—The position, then, at the end of the great war was this :—

1. While, for the first two years of the war, no or only negligible resort had been made to the use of incendiary or explosive small-arm ammunition, very considerable use was made of incendiary bullets during the last two years.

2. This ammunition was employed mainly and primarily against observation balloons, but was also used to a less, but still material, extent against aeroplanes.

built up had a shot clean through it. The metal casing which encloses the motor below looks like a sieve. This is evidence that the English have shattering (*Zerschellgeschosse*) or dum-dum bullets, for there are only two points of entry on the casing as against ten to twelve points of exit. The bullets, therefore, split up inside the casing."

¹ See, for instance, F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War of 1914-18*), 1923, pp. 443-4, where reference is made to the use of "the Pomeroy (explosive) bullet" and also the Brock, in addition to the Buckingham incendiary. Mr. Cutlack states that the official orders were that the Pomeroy might be used against Zeppelins or balloons, but not against aeroplanes in air-fighting over the lines. See also C. C. Turner, *The Struggle in the Air*, p. 126; A. F. Pollard, *Short History of the Great War*, p. 308, for reference to use of explosive bullets.

² See the *Daily Mail*, 14 December, 1918.

³ See *Recueil des Actes de la Conférence de la Paix, Partie IV., Commission de la Conférence, B. Questions Générales*, (2) *Commission des Responsabilités des Actes de la Guerre*, p. 212. See also Coleman Phillipson, *International Law and the Great War*, 1915, pp. 198-201, and Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1082, for cases of the use of explosive and expanding bullets by German and Austrian troops in the great war.

3. That its use against aeroplanes was of questionable legitimacy is shown by the issue of special certificates to the airmen carrying it, to protect them in case of capture.¹

4. The cases of the use of explosive bullets remained infrequent, even during the later stages of the war.

The problem for the future.—What, now, of the future? Three courses are possible.

First, to maintain the present international law upon the subject as laid down in the Declarations of 1868 and 1899 and to continue the prohibition of the employment of explosive and incendiary bullets in the air as on land and sea.

Secondly, to modify the present international law by adopting the practice of 1916-18 so far as that practice (as evidenced by the certificates sometimes given to airmen) amounted to a recognition of the legitimacy of incendiary (and possibly explosive) bullets against lighter-than-air craft but not against aeroplanes.

Thirdly, to abolish the existing restrictions so far as air warfare is concerned and to legitimatise the use of incendiary and explosive bullets by and against aircraft in all circumstances.

The complete prohibition of special ammunition impracticable.—The objection to the first course is that a complete prohibition of incendiary (and perhaps explosive) bullets is unlikely to be observed in circumstances in which there are very powerful military reasons for disregarding it. If incendiary (or explosive) bullets are the sole effective means of destroying an enemy's observation balloons rapidly and if it is of vital military importance that the enemy should be prevented from observing from such balloons some great operation which is being prepared in secret near a battle-front, the inducement to break the rule in a crisis will be overwhelming. The restrictive laws of war never stand for very long against imperative military necessity unless they are laws reinforced by some very strong humanitarian motive or appeal. It cannot be held that to shoot explosive or incendiary bullets at the fabric of an observation balloon, the observer in which has his parachute for escape in the event of its destruction, would be an operation repugnant to humane feeling, and it is, therefore, unlikely that

¹ See pp. 178-9 *supra*. Mortane (note in *La Guerre aérienne*, 27 December, 1917, p. 118) states that incendiary bullets are forbidden except for use against gas-filled engines, and this may be taken to be the view generally held by experts during the war.

a belligerent would shrink at a critical moment from casting aside a rule which banned the use of such ammunition.

The abrogation of the Declarations of 1868 and 1899.—The objection to the third course is that it means, in effect, the total abrogation of two restrictive rules of great and acknowledged benefit to the fighting men of all nations. The Declarations of 1868 and 1899 are two of the great charters establishing the claim of the human instruments of destruction to a mitigation of the extreme rigours and unnecessary cruelties of war. No one can contemplate their abolition without profound regret. Before they are swept aside, the necessity for the complete abandonment of them should be given a far more careful consideration than (the writer submits) it has as yet received. If they are declared inapplicable to air warfare, the effect will quite certainly be that explosive and incendiary ammunition—probably of a more horrible type than that used in 1916-18—will become the normal small-arm ammunition carried by aircraft. It will be used—it is absolutely certain to be used—not only against other aircraft but against ground troops, for “trench-strafing,” etc.¹ Ground troops attacked with such ammunition cannot be denied the right to reply in kind; and if ground troops have explosive or incendiary ammunition to use against aircraft, they will almost certainly use it on occasions against other ground troops. This, indeed, happened in the great war, according to a report of *The Times* special correspondent on the western front under date of 16 November, 1916. He states: “There have been repeated stories in this battle of the use by the enemy of explosive bullets. Prisoners taken here declare that explosive bullets are used in the machine-gun belts in the ratio of 1 to 20 ordinary bullets. The ostensible reason is that they are for employment against our aircraft *but the same belts are used against our infantry.*” Indeed, it is difficult to see how, if such bullets are served out to troops to be used against aircraft, their use against other ground troops can possibly be prevented.

¹ “Tracers” were often fired by airmen against ground troops in the late war—see “Spin,” *Short Flights*, p. 217; and Wedgwood Benn, *In the Side Shows*, p. 141—for instances where British airmen fired tracer bullets at enemy troops, and Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 263, where it is stated that American airmen used tracer ammunition against troops and wagons congesting the roads in September, 1918. Tracer bullets were also used, of course, by ground troops against ground troops. According to Prof. J. H. Morgan (*German Atrocities: an Official Investigation*, 1916, pp. 228-32), the German troops on some occasions used *incendiary* bullets against our troops. But the evidence which he cites is not convincing: the bullets in question were probably ordinary “tracers.”

The use of special ammunition by ground troops against aircraft.—It may be urged that even if aircraft are not allowed to use incendiary or explosive ammunition, ground troops should, nevertheless, be at liberty to use it against aircraft because they are attacked by aircraft with high explosive and incendiary bombs. Such ammunition is, indeed, it may be contended, the only effective means by which machine-gunners can reply to the bombs from overhead. But reasoning on such a line would legitimatise the use of explosive or incendiary bullets in ground fighting against artillery firing high-explosive or incendiary shells, and the practice of war contains no precedent in favour of a waiving of the rule in either of the Declarations in such circumstances.

Restriction of special ammunition to attacks on balloons and airships.—There remains to be considered the second or middle course of the three referred to in page 186, viz., the legalising of the use of special ammunition against lighter-than-air craft while prohibiting its employment against aeroplanes. Is that course a practicable one? The writer submits that it is.

The objection is that if incendiary (or explosive) ammunition is carried by aircraft for use against lighter-than-air craft, it is impossible to prevent its use against hostile aeroplanes which may attack the machine carrying it. Naturally an airman who is suddenly attacked will defend himself with the ammunition which is already in his belt or drum. There is nothing new in this difficulty. Capt. E. V. Rickenbacker states that on one occasion, in September, 1918, he was unexpectedly attacked by a Fokker while himself seeking to destroy a German balloon. "All my ammunition," he says, "was of the incendiary variety for use against gas-bags." Nevertheless he—naturally—shot back at the Fokker and brought it down.¹ Another American pilot relates how the same kind of situation arose in an encounter with German aircraft off Borkum Island, but in this case there were present also Allied machines carrying ordinary ammunition and the attacking German aeroplanes were driven off by the latter.²

¹ E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, p. 270.

² "Before the 'Camel' left us we had to drive off a flight of German planes which were attacking it; the 'Camel' was helpless because it carried only explosive ammunition for the Zeppelin, instead of bullets" (Lieut. J. Perrin, U.S.A. Naval Reserve Flying Corps, in *New England Aviators*, i. 392). An American volunteer in the French aviation wrote on 20 March, 1917: "Saturday morning at 6.10 several of us went out on an alert after Zeppelins. I was the one to attack, as I carried incendiary bullets, the others were my guard" (*War Letters of Edmond*

The difficulties involved in such restriction not insuperable.

—It is no sufficient reason for condemning a rule restricting the employment of incendiary or other similar ammunition to operations against lighter-than-air craft to say that, in practice, if its use is allowed against such craft, it will also sometimes be used, and used necessarily, against aeroplanes. Admitted that this is so ; nevertheless, if the rule is obeyed in the spirit, it will be a sound and useful one, and will give rise to no insuperable difficulty, technical or legal. If an airman who is "out after gas-bags" has suddenly to defend himself against aeroplane attack and uses the special ammunition for that purpose, if he is then captured and charged with using illegitimate bullets, and if he can show that he acted under "the necessity of war," no court-martial is ever likely to condemn him. After all, court-martials are composed of officers who know that they or their comrades may be faced with exactly the same difficulties as those with which the accused person had to contend. If necessary, a proviso could be added to the rule restricting the use of incendiary or explosive ammunition to attack upon lighter-than-air craft, to protect an airman who is compelled by force of circumstances to use it in exceptional circumstances against aeroplanes from liability to be treated on that account as a war criminal if captured. Such a proviso would, however, be inserted merely *ex abundanti cautela* ; the airman would, in any case, be protected under the old and well-established saving clause, implicit in the rules of warfare, which recognises the "necessity of war" as justifying the relaxation of a rule where circumstances make its strict observance an impossibility.

The man rather than the machine the target.—Another objection which might be raised to the compromise suggested is that it is necessary for military reasons to allow the use of ammunition capable of cutting controls or otherwise damaging the mechanical parts of an aeroplane and so disabling or destroying it where ordinary ammunition would not have this effect. It is true that the conditions in air combat do differ from those existing in infantry operations. In the latter the target of rifle or machine-gun fire is a human one ; in air combat it is part human, part mechanical. But it is an undoubted fact that, in air combat, pilots and gunners seek primarily to kill

Genet, 1918, p. 309). One pilot in each American patrol carried incendiary ammunition, to attack balloons ; the rest had ordinary ammunition (see C. J. Biddle, *The Way of the Eagle*, 1919, p. 256).

one another, not to disable the machine. "Air fighters always aim to hit the pilot of a machine," says an American expert. "The gasoline tank, the motor, the propeller, and other parts of the aeroplane get hit as the result of the effort of the gunner to hit the pilot."¹

The present writer has questioned many war pilots upon this subject and has invariably received the reply that they aimed at the man and not at the machine. That this was the general practice is shown by the records of air battle casualties; the human losses through bullet wounds were undoubtedly greater than those from crashes.² The number of famous airmen who were killed or mortally wounded by bullets (mostly shot through the head)—Pégoud, Guynemer, Ball, Holck, Putnam, Beauchamp, Wissemann, Chaput, Hawker, Féquant, Coiffard—was notable.

In the greatest book which air warfare has inspired—*En Plein Vol* by Marcel Nadaud, a work crowned by the French Academy—one may read a wonderful description of the return of the machine in which Capt. Féquant, for the time an observer because of a recent wound, met his death in mid-air on 5 September, 1915. The pilot, Niox, lands the machine with difficulty. "We rush to it and there leaps to our eyes a sight worthy of Edgar Poe: the body of Capt. Féquant hangs half out of the observer's seat. Killed by a bullet through the head, his blood, vaporised somehow by the speed, has covered the whole machine. . . . There is blood everywhere. . . . The biplane had gone into the air unstained, it returns all red!"³

There are on record cases in which the pilot of a two-seater machine has been killed and the observer mortally wounded by bullets; in which two of the three occupants of a three-seater machine have been killed in the air; in which one occupant was killed and the other two received seven bullet wounds between them; and in which an observer was killed by three bullets through his head.⁴ But the most remarkable

¹ H. Woodhouse, *Textbook of Military Aeronautics*, 1918, p. 51.

² Only casualties in *air combats* are here in question, not those arising from training or from night-operations in which there was no engagement with hostile aircraft.

³ Nadaud, *En Plein Vol*, 1919, p. 54; see also D. Vincent, *La Bataille de l'Air*, 1918, p. 56, for this incident.

⁴ In an air combat on 26 May, 1915, according to the statement of a French pilot, Lieut. Mesguich, who took part in it, the German pilot was shot through the head, the observer through the stomach, the machine finally crashing to the ground; in another, on 10 May, 1917, of the three occupants of a French machine, two (Capt. Lecour-Grandmaison and Corporal Crozet) were killed, and the third (Sergeant

case of the kind is one recorded by the Australian official historian, who speaks of it as "perhaps the most extraordinary adventure recorded on the western front." It was that of the R.E. 8 piloted by Lieut. J. L. Sandy, with Sergeant H. F. Hughes as observer; *both* these airmen were killed by bullets in an air combat near Messines on 17 December, 1917, but the machine continued to fly in wide circles, with its two dead occupants, until the petrol ran out, and it finally crashed at a place fifty miles south-west of the scene of the combat. No further injuries were sustained by the two bodies in the crash.¹

The "Pilote disparu" states that there are three things to aim at, the head of your opponent, his breast, and the petrol tank.² Boelcke stated that the greater number of his victims were killed in the air by his bullets. No doubt the engine and petrol tank are also aimed at, but is the military importance of injuring them so great as to justify the disregarding of the terrible wounds which a bullet specially designed for that purpose may inflict upon the human freight of the machine?

The terrible wounds inflicted by special ammunition.—Of the terrible nature of the wounds inflicted upon airmen who were so unfortunate as to be hit by explosive bullets—which term, as already stated, was used loosely and often referred to incendiaries—in the late war, there is ample testimony.³ The fact that terrible wounds may be inflicted by other munitions (e.g. shells) which are not forbidden is no sufficient reason for accepting the employment of the illegitimate bullets philosophically and as a matter of no moment. Why should that argument hold good only in air warfare and the *extra* liability to mutilation be imposed upon airmen alone? It is because of the nature of the wounds that may be inflicted that one is justified in demanding the prohibition of special ammunition in air fighting; but regard must also be had to the increased likelihood of fire in the air which also results from its use. It

Boyé) succeeded in landing the machine; in another, on 23 September, 1917, the observer, Capt. Gay, was killed, the pilot, Sergeant Dupont, received three bullets, and the machine-gunner, de Villaine, received four (*La Guerre aérienne*, 7 March, 1918, p. 275; 9 August, 1917, pp. 611-12; 9 May, 1918, p. 415). The French observer, Senain, was killed by three bullets through the head (B. Lafont, *Au Ciel de Verdun*, p. 82).

¹ F. M. Cutlack, *The Australian Flying Corps*, 1923, pp. 203-5.

² Marc, *Notes d'un Pilote disparu*, 1918, p. 119.

³ See Hall and Nordhoff, *The Lafayette Flying Corps*, pp. 24, 29, 108, 409, and J. R. McConnell, *Flying for France*, pp. 41, 95, as to the hideous wounds sustained by Balsley and Rockwell; and *La Guerre aérienne*, 5 September, 1918, p. 694, as to the terrible wound sustained by a French observer, as described by the pilot, Debrie.

is true that an aircraft may be set on fire—quite apart from natural causes such as back-fires—by means which it would not be practical politics to attempt to ban: as, e.g. by shells from anti-aircraft guns or from cannons mounted in aircraft. All that one can demand is that, save in regard to attack upon the supporting gas-bags of lighter-than-air craft, the same rules should apply in air as in other forms of fighting. If, save for the modification referred to, the same rules do apply, the practical effect will be to eliminate from the normal air combat two of its worst horrors—the danger of an atrocious wound and the increased danger of being shot down in flames. Air combats tend more and more to be fought at great altitudes,¹ where the presence of observation balloons is an impossibility and that of free lighter-than-air craft an improbable contingency (in future wars) and where, therefore, there can be no excuse for using incendiary or explosive ammunition. One shudders in any case to think of the combats at these great heights—three miles and over—of the young airmen going up “to walk with Death and Morning on the silver horns.” But to send them up to fight with a special ammunition that is considered too horrible for use on land—surely that should, and could, be prevented? Even to lessen the danger of fire will be a gain.

The danger of fire in the air.—Fire in the air is the airman's nightmare. “Fire is the great enemy of the aviator,” says M. Mortane. “One thinks of it with a cold shudder.”² “If there is one thing an air pilot dreads,” says a war pilot, “it is fire.”³ “No form of death is so dreaded by the pilot as falling to earth in flames,” writes another.⁴ “What the average pilot or observer dreaded more than anything was to be shot down in flames,” another writes.⁵ “What I have always feared the most, up there,” says another, “is not the German aircraft nor the special cannons, but fire. When an aircraft takes fire in the air, the pilot has usually two alternatives—to be burnt alive with his machine or to jump into the void and die more quickly.”⁶ The most sinister memory of Garros was seeing

¹ Capt. A. Bott (“Contact,” *An Airman's Outings*, p. 179) says that “the average air battle of to-day begins at an altitude between 12,000 and 20,000 feet.” Major Bishop (*Winged Warfare*, p. 246) tells of an air combat which he fought at the height of 19,500 feet (nearly 4 miles high).

² M. Mortane, in *La Guerre aérienne*, 13 September, 1917, p. 691.

³ “Flight,” *The Flying Yankee*, p. 224.

⁴ E. V. Rickenbacker, *Fighting the Flying Circus*, p. 51.

⁵ A. C. Reid, *Planes and Personalities*, p. 31.

⁶ E. C. Parsons, *L'Histoire de l'Escadrille de la Fayette*, in *La Guerre aérienne*, 12 December, 1918, p. 917. The American “Ace,” Raoul Lufbery, leaped to

an enemy machine which he had set on fire going down in flames.¹ "One has no hesitation in saying," writes Mr. C. G. Grey, "that the ever-present idea of being shot down in flames is the greatest strain which the active-service pilots have to bear."² Major Bishop³ and Lieut. Noble speak of the "satisfaction" with which one sees a hostile aircraft go down in flames—one feels then that its destruction is certain—but the latter hastens to add that it is a different matter when one of one's own side goes down. Then, "it is some time before the spectacle of the burning machine bids a final adieu to one's dreams." Sometimes death comes quickly, but "more often the catastrophe is a painfully protracted form of hell."⁴

A practicable formula suggested.—Unquestionably the use of incendiary or explosive ammunition increases the danger of fire in the air. The Australian official historian draws attention to "the increasing numbers of aircraft which were shot down in flames on both sides during 1918." That increase he ascribes to the special ammunition used. "Neither aeroplanes nor airships could be so destroyed in air fighting by the use of ordinary bullets, or even of tracer bullets, which latter merely contained at the base of the ball sufficient phosphorus to mark to the gunner's eye the track of the bullet through the air."⁵ The question is primarily one for airmen to decide; it is for them to say whether they wish to slaughter and mutilate one another with these horrible kinds of ammunition, and also, by using it, to increase manifold the dangers of fire in the air, or whether they would prefer a formula which would have the effect of prohibiting its use in the normal air combat.⁶ Such a formula, as already outlined, would maintain the prohibitions in the two existing Declarations upon the use (by or against

this death to escape the slow torture of being burnt alive (Rickenbacker, *op. cit.*, p. 51).

¹ *La Guerre aérienne*, 21 December, 1916, p. 93.

² *The Aeroplane*, 26 June, 1918.

³ W. A. Bishop, *Winged Warfare*, p. 101. The French "Ace," Delorme, also spoke of the satisfaction of shooting down an enemy aircraft in flames (*La Guerre aérienne*, 15 February, 1917, p. 223).

⁴ W. Noble, *With a Bristol Fighter Squadron*, p. 119.

⁵ F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 443.

⁶ It is possible, of course, that the right of ground machine-gunners to use explosive (or similar) ammunition against aircraft might be claimed even if its use by aircraft against aircraft were banned. But, as already stated (see p. 188), such a claim would be illogical unless the use of such ammunition is also to be allowed against field or other artillery, and, if it is, then one might as well annul both Declarations at once for all purposes whatsoever. Does any soldier really desire that result?

aircraft, as in all other kinds of fighting) of bullets that explode, inflame, or expand on contact, but would (if necessary) qualify these prohibitions by the following proviso, namely: that the bullets in question may be used against the fabric of lighter-than-air craft, and if an airman who is detailed to attack such craft is himself attacked in the course of his duty by heavier-than-air craft, he is not prohibited from defending himself, if necessary, with the bullets carried for the purpose for which he is detailed. The writer is convinced that the rule embodied in such a formula would be a practicable one and that it would prevent air combat from becoming the almost unimaginably hideous business that it may become if the restrictions upon the use of the ammunition in question are entirely dropped.

The Air Warfare Rules, 1923.—That they should be entirely dropped was the view of the jurists who considered the question of a code for air warfare at The Hague in 1923 and agreed to the following provision upon this matter :—

“ *Article 18.*—The use of tracer, incendiary, or explosive projectiles by or against aircraft is not prohibited. This provision applies equally to States which are parties to the Declaration of St. Petersburg, 1868, and to those which are not.”

It must, however, be added that the jurists concerned were also, in this matter, the official representatives (though only *ad referendum*) of their countries, and that they were closely bound by the instructions which they had received. It is extremely improbable that they were, in general, satisfied with the provision to which they found it necessary to agree.

CHAPTER VIII.

BOMBING : (I.) MILITARY OBJECTIVES.¹

Military objectives and air attack.—While the peculiar quality of air power is its capacity for destructive action having a political and psychological purpose, aerial bombardment for a definitely military purpose is, and must always remain, an operation of great importance. So long as armies and fleets continue to be used in war, they and their constituent parts, their bases and supply sources, their *personnel* and *matériel*, the barracks in which the *personnel* are housed, the factories and depots in which the *matériel* is made or stored, will be prime targets for aircraft attack. Even when the older arms of warfare are scrapped—and that time is not yet—there will remain as specifically military objectives the *personnel* and *matériel* of the air services themselves; the establishments, depots, and aerodromes of the air forces, the aircraft factories, aero-engine works, machine-gun and bomb manufacturing shops, and those in which the various parts and accessories of aircraft are constructed or repaired, will always be a mark for an enemy's bombing machines. It is, therefore, necessary to consider carefully the war right of attack from the air upon military objectives, and it is convenient to deal with this subject and with the provisions of the Air Warfare Rules of 1923 relating to it before coming to the more difficult question, with which the Rules of 1923 do not deal constructively, of the bombardment of non-military objectives.

It is unnecessary to describe at any length the pre-war rules of bombardment; these may be ascertained from any of the standard works on the international law of war. It is, however, useful to draw attention to the stages by which the international regulations advanced to the position existent in 1914. That position was the culmination of a series of stages which had begun forty years before.

¹ This chapter is a reproduction, with important modifications and additions, of a paper on "Air Bombardment," which the writer contributed to the *British Year Book of International Law*, 1923-24.

The stages of international legislation on bombardment.—

The first stage is to be found in the rules proposed for land bombardment at the Brussels Conference in 1874. These rules laid down that only *fortified* towns could be besieged, and that *open towns* which were *not defended* could neither be attacked nor bombarded.

The first Conference of The Hague, in 1899, taking up the unfinished work of Brussels, amended the rules to read that towns which were *not defended* could not be attacked nor bombarded. The restriction of legitimate attack to fortified or non-open towns was abandoned.

At the second Conference of The Hague, in 1907, the land war rule was merely extended to forbid the bombardment of non-defended towns "by any means whatever," the purpose of the extension being to make the rule applicable to bombardment from balloons as well as by artillery. In regard to *naval* bombardment, however, this Conference took an important step forward. It recognised the right of a naval commander to shell certain defined parts of even an undefended port or town. These parts were :—

"Military works, military or naval establishments, depots of arms and of material of war, workshops or plant fit to be used for the needs of the enemy fleet or army, and ships of war in the port."

The reason for the naval rule.—As readers of this book will be well aware, the departure thus sanctioned from the land war rule exempting undefended towns from bombardment was due, as the Report of the Committee which examined the question at The Hague expressly states, to special reasons which apply to naval bombardment, and which, it may be added, equally apply in large measure to aerial bombardment. While in land war a belligerent will be in a position to take possession of an undefended place and then, without having recourse to bombardment, to carry out any destruction which would assist his operations, the commander of a naval force may be obliged under certain conditions, no other means being available, to use his guns to destroy enemy establishments serving military ends, when he has no landing party at his disposal, or is faced by the necessity for a rapid withdrawal.¹

Summary of the stages.—One can see, then, in the proposals of the Conferences of 1874, 1899, and 1907, three successive stages in the development of the law of bombardment, and

¹ *Blue Book*, Cd. 4081 (1908), p. 115.

steadily in a direction away from the old conception of the "walled city" of the ancients and towards the modern and more scientific test of the "military objective." First, only the fortified and defended city can be attacked. Next, an unfortified city can be attacked if it is defended. Then, an unfortified and undefended city containing certain establishments can be attacked for the purpose of destroying these establishments. The development must now proceed to yet another stage or rather the last stage must be completed by discarding finally the criterion of "defence" and substituting therefor the idea implied in the naval bombardment rule, namely, that of the "military objective."

Inadequacy of the "defence" test.—The old broad rule that a defended city may, and that an undefended city may not, be bombarded, is no longer of any practical value. It has never been a satisfactory rule, it is more unsatisfactory than ever when applied to air bombardment. At the best, as Professor Pillet states,¹ "undefended is an unfortunate expression, for one cannot know whether a town is defended until the moment when one decides to attack it." It will be still more difficult in future to tell whether a place is defended or not, for defence against air attack will tend to take the form of aerial counteraction rather than of artillery defence, and a squadron or flight of defending aircraft, perhaps based on some fairly distant aerodrome, may suddenly appear above a town which is entirely open so far as ground defence is concerned, and deny the raiding aircraft force access to that town, which cannot then truly be said to be undefended. For this and other reasons it has become necessary to reconsider the criterion of "defence" as a test of the legitimacy of bombardment and to make liability to or immunity from attack depend upon some other consideration.

The test to be applied.—What, then, should be the test? Complete prohibition of air bombardment may be ruled out as an impossible ideal.² Unrestricted freedom of air bombardment

¹ *La Guerre actuelle et le Droit des Gens*, in *Revue de Droit Int. Public*, 1916, p. 429. See also J. W. Garner, *La réglementation de la guerre aérienne* in same *Revue*, 1923, p. 392, where the old distinction between defended and undefended towns is stated to be "illogical and impracticable" as applied to air attack; and Judge Bassett Moore's *International Law and some Current Illusions and Other Essays*, 1924, p. 194, where the test of "defence" is stated to be "inappropriate and insufficient."

² Such prohibition has been suggested by the German jurist, Otfried Nippold (*The Development of International Law after the World War*, trans. by A. S. Hershey, 1923, p. 144); he holds (incorrectly, the present writer submits) that the throwing

may similarly be set aside as repugnant to sentiments of humanity. A rule which is either unacceptable *ab initio* or bound to break down in practice is useless. One must take account of the practical limitations of the issue. One may choose either of, or one may combine, two alternatives, which, based on distinct principles, are not mutually exclusive in application. The first of these alternatives—the doctrine of the bombardment of military objectives, wherever found¹—was that adopted by Great Britain, France, and Italy in the great war, so far as one can discern the principle which they followed. The second—the doctrine of the limitation of air attack to combat areas—was the basis of Germany's philosophy of bombardment (a philosophy, it may be added, in which precept was clearer than practice), but she borrowed from the tenets of the other school to this extent that, within the combat areas, she professed to bombard only fortresses and other military objectives.

British practice in 1914-1918.—The British doctrine of air attack may be gathered from certain official pronouncements which were made during the war. The first was an Admiralty *communiqué* of 16 February, 1915, relating to an R.N.A.S. air raid on Bruges and Ostend; in this it was stated: "Instructions are always issued to confine the attacks to *points of military importance*, and every effort is made by the flying officers to avoid dropping bombs on any residential portion of the towns." Mr. Asquith stated in a reply to a question by Mr. Jowett in the House of Commons on 4 March, 1915: "Attacks (by our air, land, or sea forces) are directed only against *points of military significance*, and every precaution is taken to avoid damage unnecessary to the object in view." In each case attacks on German forces and military establishments in Belgium were referred to, but the same policy of confining bombardment to military objectives was affirmed at a later date by the Under-Secretary of State for War (Mr. Macpherson) in regard to attacks upon German towns. Speaking in the House of Commons on the 19 March, 1918, he said: "By attacking in daylight it has been possible to con-

of bombs can "only serve to terrorise" and "is unable seriously to further the war aim." He would go further than the banning of bombing, and would prohibit all air fighting, confining aircraft to reconnoitring: an impracticable suggestion, for opposing scouts who meet will always fight.

¹ For this doctrine, see an interesting article by the well-known Japanese writer, M. Sugimura, on *La Réglementation des Bombardements aériens* in the *Revue juridique internationale de la Locomotion aérienne*, June, 1924.

centrate attack on *objects of actual military importance*—a striking contrast to the promiscuous methods adopted by the enemy.” How far this principle was, or could be, actually embodied in practice may be, as will be seen hereafter, open to question; but at all events, in accordance with the principle thus laid down, the British reports of air raids upon German towns invariably specified the actual objectives of attack—railway stations, barracks, munition and chemical works, etc. Whether the town was technically an “open,” i.e. an undefended one, was not stated, and was apparently regarded—and rightly so—as being for this purpose immaterial. There is nothing in any British official report or pronouncement to indicate that the conception of the “combat area” was entertained in any form in this country.

French practice.—The French view was in agreement with the British, although in some cases the French official *communiqués* tended to confuse the question by speaking, incorrectly, of “reprisal” attacks by French airmen on German works and establishments which were perfectly legitimate objectives in any case.¹ That the doctrine of the military objective was held in France is clear from various official pronouncements.

A proclamation which was dropped by French airmen upon Sofia in September, 1915, may be taken as representing the view held upon this subject in the French service. It read:—

“INHABITANTS OF SOFIA.—Our aircraft observe the rule of bombarding *only military establishments and those serving the national defence*. The German Zeppelins and aeroplanes, however, drop bombs on Salonika and Bukharest, assassinating old men, women, and children. This is a barbarity of which only Germans are capable. Such acts, such crimes, call for vengeance. Inhabitants of Sofia, your town expiates to-day the crimes of your allies. If such crimes are renewed, they will be followed by the same punishment.”²

The same view is expressed by Capt. Personne of the French aviation, in a paper on bombardment, prepared at the end of 1917 and evidently written under official inspiration, in which he states that bombardment of enemy *towns* should be limited to the case of reprisals for analogous enemy attacks, and that leaflets should be dropped in all such cases to inform the inhabitants of the reasons for bombing a town *qui n'est pas un*

¹ Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 543.

² J. Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, ii. 38.

objectif essentiellement militaire. He distinguishes between enemy towns, as such, and "*centres industriels*," which, when devoted to the supply of munitions of war, are legitimate objectives.¹ So, too, M. Lafon, after stating that German airmen are accustomed "*à jeter des bombes au petit bonheur*," adds that French and British airmen, on the other hand, attack only "*des ouvrages militaires*."²

Italian practice.—That the Italians also accepted the doctrine of the military objective is shown by Gen. Cadorna's report of 21 August, 1915, which contrasts with the enemy's raids on cities like Udine "our bold and successful air raids directed against a military objective (*obiettivo militare*), in full observance of the laws and usages of war." Again, on 30 August, 1915, Cadorna speaks of "our air raids, always directed against military objectives," and at later date (2 August, 1916) he contrasts with the Italian methods the attacks by Austrian aircraft upon the Adriatic cities *senza alcuno scopo militare*.³

German practice.—Gen. von Hoepfner, who commanded the German air service during the latter half of the great war, states the German view as follows :—

"At the outbreak of war we took the view that the weapons admitted by international law as being in accordance with the usages of land warfare should be employed against fortresses and important military places in the actual theatre of war (*Kriegsschauplatzes*), that is, the zone in which the armies were fighting. We limited ourselves accordingly. England went further. In the autumn of 1914 she destroyed the airship Z11 in the shed at Düsseldorf, attacked Friedrichshafen, and raided military objectives far distant from the field of operations. But at that time she showed consideration for the peaceful population. France adopted a different line. On 4 December, 1914, she attacked the entirely undefended town of Freiburg-in-Breisgau, 80 kilometres behind the lines, and thus for the first time carried the terror of air warfare into an entirely peaceful territory."⁴

When Karlsruhe was bombed by French airmen on 15 June, 1915, the German official *communiqué* protested against the attack on an "open town, far from the theatre of operations, and not in any way fortified." A similar protest was made

¹ J. Mortane, *op. cit.*, i. 327-8.

² C. Lafon, *Les Armées aériennes modernes*, 1916, p. 214.

³ *Diario della Guerra d'Italia*, i. 305, 334; ii. 272.

⁴ Von Hoepfner, *Deutschlands Krieg in der Luft*, 1921, p. 21. Freiburg may have been an "entirely undefended town," as von Hoepfner states, but it contained the *Aviatik* aircraft factory, and that factory was the (legitimate) objective of the French raid (see D. Vincent, *La Bataille de l'Air*, 1918, p. 49).

against the subsequent bombing of Freiburg, Stuttgart, and other towns in the interior of Germany. An official Berlin *communiqué* of 21 July, 1916, was more explicit. Complaining of French attacks on open German towns, it stated that "German air attacks until now have been exclusively directed against fortresses or works in *places within field operations*, namely, railway junctions, troop camps, or transport stations, which were immediately connected with the operations." A French *communiqué* of 28 June, 1916, had anticipated, and disposed of, the German contention that German air attacks had been, in fact, limited in the manner stated, but it is evident that the official eye of Germany was blind, whether deliberately or otherwise, to inconvenient facts. At any rate, as late as 31 January, 1918, an official German report described the Gotha raid upon Paris of the preceding night as a reprisal for attacks on German "open towns *outside the region of operations*," and in March, 1918, we find a more explicit statement of the German position in an interview with the general officer commanding the German air forces, published in the *Kölnische Zeitung* of 17 March, 1918. "Hitherto," said the general, "our air attacks have been exclusively directed against such targets as were directly connected with military activities at the front. Moreover, we have repeatedly requested our enemies to indicate all cases where *open towns outside the region of operations* have been attacked by our bombing squadrons, but they have returned no answer." Still later, at the end of May, 1918, we find the German Chancellor, Hertling, expressing readiness to consider any proposal from the Allies to put an end to "air attacks against towns outside the zone of operations";¹ and this offer was repeated in the Reichstag by Gen. Wrisberg on 8 June, 1918.²

Restriction of air attack to zones of operations.—Germany could the more readily discount the military objections to her doctrine by reason of the exceedingly wide interpretation which she gave to the definition of a field, theatre, or zone of operations. As Professor Rolland has pointed out,³ the distinction which Germany sought to make between places in the theatre of operations and other localities was apparently one which had the effect of protecting Karlsruhe and Freiburg-in-Breisgau,

¹ Reuter message from Amsterdam in *Daily Mail*, 24 May, 1918.

² Central News message from Amsterdam in *Evening Standard*, 8 June, 1918; Exchange message from Copenhagen in *Observer*, 9 June, 1918.

³ *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 552.

but not (strangely) towns like London, Troyes, and Nogent-sur-Seine. From the beginning of the war, the German authorities appear to have regarded places like London and Aldershot as being in the theatre of operations. Mr. Churchill states that at the end of December, 1914, an Imperial decision was taken not to bomb London and to confine air attacks to "dockyards, arsenals, docks (those near London also) and military establishments of a general nature (also Aldershot Camp if there are no German prisoners there)." ¹ Gen. von Hoëppner, not very consistently with his statement, already quoted, of Germany's doctrine of air bombardment, justifies the attacks on London on two grounds. London, he says, was the centre of the war strength of the Entente. It had become "a second Woolwich, one great arsenal." But, further, "England was compelled by our attacks upon the sources of her military strength to retain a large portion of her air strength at home." ² The result of the attacks of the German airships in 1916, he says elsewhere, was to chain down in England (to the relief of the German front) important defences, ground and aerial, which would otherwise have been utilised in France.³

That Germany, while holding the doctrine of the "combat area" (though interpreting it in an elastic fashion), recognised also the doctrine of the military objective, is evident from the care which the Berlin authorities took to enumerate the military objectives of their raids upon London and other cities. Although they claimed (in an official memorandum issued at the end of March, 1915) that London was liable as a whole to bombardment on the ground that it was a "defended" city,

¹ Churchill, *The World Crisis*, 1915, 1923, p. 62. It appears, however, from the German official Naval History of the war (vol. iv., *Der Krieg in der Nordsee*, 1924, p. 262), that the decision to bomb London was given with reluctance by the Kaiser, on pressure from the naval staff, and then only on condition that buildings like St. Paul's should be spared, and that the city should only be bombed during week-ends, when it was more or less empty. When the latter condition was shown to be an impracticable one, it was withdrawn, but the subsequent orders appear to have limited air attacks to the docks and to have prohibited bombardment of the poorer residential districts on the north bank of the Thames: a limitation and a prohibition which were certainly not observed in practice. For the view of the German Naval Staff on the subject, see von Tirpitz, *My Memoirs*, Eng. trans., 1919, pp. 487, 502, where the Grand Admiral gives his opinion that "all that flies or creeps should be concentrated on that city" [London], and "if one could set fire to London in thirty places, then the repulsiveness would be lost sight of in the immensity of the effect."

² Hoëppner, *Deutschlands Krieg in der Luft*, 1921, p. 113.

³ Hoëppner, *op. cit.*, p. 60. Paris, on the other hand, he states, was bombed only as a measure of retaliation for attacks on open German towns (*Zu Vergeltungsmassnahmen für Angriffe gegen offene deutsche Städte*) (p. 112).

the Berlin reports of the airship and Gotha raids upon London usually specified the military objectives (docks, wharves, munition works, railway stations) which the German airmen imagined that they had bombed. Evidence of official acceptance of the doctrine of the military objective is also to be found in an incident which occurred in connection with the aeroplane raid of the night of 30-31 January, 1918, upon Paris, when a German D.F.W. machine was brought down at Vaires-sur-Marne, and its two occupants were captured. They were found to be in possession of an official order which directed them to attack "the fortress of Paris" in reprisal for French attacks upon the open towns of Mannheim, Lahr, and Fribourg, and added that "the sole objectives to be chosen are the railway stations and public buildings used for military purposes (Ministry of War, Headquarters of the Marine, supply depots, barracks, etc.). Hospitals, churches, and buildings having an artistic interest are to be spared." The order, says M. Mortane, was evidently designed to save the airmen from being shot.¹

The difficulties of such restriction.—The proposal that air bombing should be confined strictly to the zone of operations is one which has much to commend it. "It seems quite illogical," says Garner,² "to ban the submarine and leave the aviator free to launch his bombs upon private houses and upon unoffending, peaceful non-combatants hundreds of miles behind the battle lines." With the opinion here expressed all must agree, but one may be permitted to doubt whether the practical way to give effect to it is to prohibit completely all air bombardment outside zones of operations. If no air bombardment whatever were allowed outside such zones, soldiers and sailors would insist upon the delimitation of the zones in such a way as not to hamper their freedom of military action. Air attack being a valuable accessory of other operations, they would not be content to immobilise their air arm at possibly vital points which, especially in naval operations, it would not be possible to include in any definition of zones of operations so precise and rigid as to be of real value. The zones would have to be defined in so vague and indeterminate a manner that it would never be quite certain what places were included in them and what were not. The result would

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, ii. 343; Maurice Thiéry, *Paris Bombardé*, 1921, p. 73.

² *Int. Law and the World War*, ii. 461.

be disputes between the belligerents and a return before long to practically indiscriminate bombing.

The necessity for forbidding reconnaissance also—Apart from this objection, the further difficulty would be encountered that merely to prohibit air *attack* upon "back areas" would, by itself, be insufficient. It would be necessary, as a corollary, to ban also *aerial reconnaissance* over them. No system, however strong, of air defence could guarantee that none of the scouting aircraft slipped through the cordon of defending aircraft. It is inconceivable that the belligerent whose military interests were thus endangered would allow those scouting machines to wander at will above his cities and inspect his military preparations, troop concentrations, etc. The hostile aircraft would certainly be repelled by fire from the ground; but if so fired upon, can they be reasonably denied the right to reply in kind?

Impracticability of complete prohibition of air attack outside operational zone.—The only course would be to forbid belligerent aircraft to fly for any purpose whatever over enemy territory outside the zone of operations. But such a rule would be unlikely in the extreme to survive the strain of actual war. The truth must be recognised that all restrictive rules of war have a breaking-point which is reached fairly early in all cases in which there are not absolutely overwhelming reasons making for the observance of the rule. The only rules which long survive that breaking strain are those the violation of which is felt to be also a violation of the great fundamental laws of justice and humanity. That could not be felt of a law forbidding aircraft to fly over enemy territory or one forbidding them to retaliate if fired upon in such territory, and it is as certain as any forecast of the kind can be that a paper rule which sought to limit the action of aircraft in these ways would be an absolutely dead letter within a week or two of the outbreak of war.

The difference between operational zones and rear areas.—The idea of a differentiation between operational zones and other places, impracticable as a solution of the problem if carried to the length of complete prohibition of air bombardment outside such zones, contains, nevertheless, a sound and useful principle which cannot be ignored. Combined with the doctrine of the military objective, it goes some way, within certain limitations, to help us to formulate a possible rule for air bombardment. Whether it goes far enough is, however,

another question. There is, in actual fact, a difference which all can appreciate between attack on places in a zone of active hostilities and attack on places far removed from the scene of fighting. No doubt it matters little to the non-combatant victim of an air raid whether he (or she) is struck down in the one area or in the other. But at least in the zone of operations violence reigns and is expected. People in that zone are or can be on their guard. They must be prepared to share in some degree the dangers to which the troops all around them are exposed. In rear areas, on the other hand, a sudden and unrestricted air attack appears, at any rate to our generation, as something like an outrage and a violation of the rights of non-combatants. That which can be condoned when it is a mere incident of battle or of the activities on the outskirts of battle, takes on a very different aspect when it happens in a peaceful countryside. The sentiment of humanity, if not strict logic, calls for a differentiation between the zone of operations and territories in the rear.

Operational zones in land war.—It is necessary, however, for the reasons already given, to define the zone of operations in a different manner from that which some writers propose and, furthermore, to recognise that even outside such zone air bombardment cannot be entirely prohibited, though it may reasonably be subjected to a more restrictive rule. Some circumscribed and easily appreciable limits must be assigned to the term. If a vague or elastic significance is given to it, the resulting restrictive rule will be simply a standing invitation to disputes, recriminations, and reprisals. Only in *land* operations is it possible to affix a sufficiently precise meaning to the term. Warships and aircraft carry, if one may put it so, their own zones of operations with them; they create their battle zones as they go. Land fighting is less mobile and shifting; it is more localised geographically and the zone in which it can be regarded as existing is normally a fairly well-defined one. Not only the actual battle-ground but the towns and villages behind the lines in which the troops concentrate for attack or return to refit or rest after an engagement may be taken as constituting as a whole the operational zone. That a zone of this kind can be defined in a practical way is shown by the fact that the British Government agreed, upon the request of the Vatican, to direct the cessation of air attack upon German cities "not in the vicinity of the battle-front" on Corpus Christi Day, 30 May, 1918. No such localised area of operations

can be postulated in naval or air warfare, but in naval war any place which is being actually bombarded by a fleet should, it is suggested, be treated like a place within a zone of land operations.¹

Land bombardment within such zones.—Within these operational zones (i.e. the areas in which land operations are in progress, and towns which are being attacked by a fleet) it is not unreasonable to allow to bombing aircraft a right of attack akin to that conceded by the law of war to artillery. The latter right is, indeed, in practice so unrestricted that one is inclined, in legislating for the new arm, to temper its rigour in some degree. In land and naval bombardments, a commander may range his guns over the whole of a defended city, taking care only *so far as possible* to spare buildings devoted to religion, art, science, or charity, historic monuments, and hospitals. "Defended localities may be bombarded alike from sea and from land. And in such localities, on sea as on land, the bombardment may be brought to bear without discrimination on all their parts, even on those inhabited by the civil population."² "No legal duty exists for the attacking forces to restrict bombardment to fortifications only. On the contrary, destruction of private and public buildings through bombardment has always been, and is still, considered lawful, as it is one of the means of impressing upon the authorities the advisability of surrender."³

Air attack within operational zones.—It must be recognised that villages and towns which are within an area of operations take on the character of *places d'armes* to the extent to which they are occupied or used for military purposes. A village, for instance, which is actually being used to billet troops withdrawn for the time from the front line, becomes temporarily the equivalent of a military cantonment, and as such is liable to bombardment as a whole, if, in fact, the troops are billeted throughout it. It is the same with those quarters of a town (within a zone of operations), through which there runs a railway used almost constantly for the transport of troops or military stores feeding the front. Such a railway, and any station at which the troops or stores are entrained or transferred, would not only themselves be military objectives but would taint (as it were) their neighbourhood with the same

¹ See pp. 215-16.

² Fauchille, *Le Bombardement aérien*, in *Revue de Droit Int.*, 1917, p. 56.

³ Oppenheim, *Int. Law*, ii. § 158.

character. Such a result follows from the conditions in which air attack is necessarily carried out in the vicinity of a field of battle. It is impossible under such circumstances for air commanders to exercise the same care in segregating the actual military objective as that which would be expected of them in places further removed from the battle-front. Within a zone of operations, any limited area in which great military activity prevails, even if it is at the same time largely occupied by civilians, cannot be treated otherwise than as subject to air attack. This treatment may not be, perhaps, entirely logical or even ethically defensible, but at least it takes account of the *de facto* difference between an area in which a battle is raging, with all its resultant abnormalities, and one from which, except for the raiding aircraft, whose conduct is the whole point at issue, the war is far removed.

The doctrine of the military objective applicable to operational zones.—It does not follow, however, that the purely residential quarters of the town, not in the vicinity of the railway or the station, would be similarly liable to attack. Such districts cannot be reasonably regarded as affected by the radiating power of the military objectives to impart something of their own quality to property in their immediate neighbourhood. Their inclusion in the area of attack is not demanded by the military exigencies which justify raiding aircraft, operating under the stress of the conditions necessarily imposed upon them by their vicinity to a battle-front, in bombing a slightly wider area than that actually occupied by the military objectives. The doctrine of the military objective, that is, that air bombardment must be limited to individual targets of military importance, should be applied in principle even within a zone of operations and should not be regarded as modified except to the limited extent that is necessitated by the battle conditions prevailing in such a zone.

The doctrine of the military objective in regard to other areas.—Outside a zone of operations the doctrine should be more strictly applied. No difficulty in so applying it arises in such cases as those of troops encountered in open country, of isolated barracks and aerodromes, and of munition factories situated well away from ordinary dwellings. It is when one comes to munition factories, military storehouses, or important railway termini, situated in a densely populated centre of civilian industry, that difficulty is encountered. A belligerent's right to bomb military objectives cannot be prejudiced because

his enemy locates them in such places that any attack upon them must involve incidental damage to innocent life and property in the vicinity. This was emphasised in an Italian official *communiqué* (dated 22 April, 1916), issued as a reply to an Austrian complaint that, in the air raid of 21 April upon Trieste, civilians, including women and children, had been killed. The *communiqué* stated :—

“ If in the immediate vicinity of the enemy's aerodrome there happened to be civilians, men and children, that is a misfortune for which our airmen cannot be responsible.”¹

“ Our air raids,” says Admiral Scheer, “ caused injury to civilians. It was inevitable when institutions serving war purposes were so close to populous districts—perhaps with a view to secure protection for them.”²

Nevertheless, it remains equally true that in some cases of the kind the exercise by the attacking belligerent of his right would result in damage to the civilian population altogether disproportionate to the military results achieved. In such cases, humanity demands that the belligerent should refrain from attack.

The humanitarian self-restraint of bombing airmen.—But surely, it will be objected, it is fantastic to suppose that pilots, sent out to bomb certain objectives, will return with their mission unaccomplished because of considerations which are solely humanitarian or even sentimental? The answer to such an objection is that there are on record cases in which such a thing has actually happened. The first occasion was on 8 September, 1914, when a French pilot, Adjutant Quennehen, returned to Belfort without dropping his bombs on Mulhouse because it was misty and he feared to injure *des civils*.³ Shortly afterwards, on 23 September, 1914, a party of British naval aeroplanes set out to bomb Düsseldorf and Cologne. Flight-Lieut. C. H. Collet bombed the Zeppelin sheds at Düsseldorf, but the Cologne party, finding the city enveloped in mist and being unable, after flying around it for an hour, to drop their bombs without danger to the civilian inhabitants, turned back without having dropped any bombs.⁴ Sometimes, instead of returning with bombs undropped, the airmen went on to

¹ *Diario della Guerra d'Italia*, i. 959.

² Admiral Scheer, *Germany's High Sea Fleet in the World War*, Eng. trans., 1920, p. 106.

³ Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 82.

⁴ Major C. C. Turner, *The Struggle in the Air, 1914-18*, p. 162.

another objective when their original one was obscured by clouds or mist. An instance is recorded in the British (G.H.Q.) official report of 11 December, 1917, which states that our airmen set out to bomb certain factories in Germany, found them obscured with clouds, but, seeing another possible target (the railway junction north-east of Pirmasens) through a gap in the clouds, bombed that. Cologne was treated with similar consideration by a squadron of the British Independent Air Force on 1 August, 1918. The squadron, finding the city enveloped in cloud, turned and dropped their bombs on the factories at Duren (half way between Aix-la-Chapelle and Cologne) instead.¹ In August, 1915, a pilot and observer who were detailed from a squadron attached to the entrenched camp of Paris to carry out a night bombing raid returned with their charge of projectiles intact rather than drop them on a place where they would claim innocent victims.² Admiral Scheer states that similar cases occurred on the German side.

"Airships," he states, "frequently returned from their expeditions with their full complement of bombs, because they had not been able to make out such targets [munition factories, arsenals, stores, docks, wharves] with sufficient certainty. It would have been easy enough for them before returning to get rid of their bombs and drop them on any place over which they happened to fly, if they had wanted to kill harmless citizens."³

So, too, an official Italian *communiqué* issued by the *Agenzia Stefani* on 10 August, 1917, stated that in the raid upon Pola of 3 August,

"not all the machines dropped their bombs, one group of aeroplanes not being able to identify their objectives in the darkness, and in order not to injure the city and make victims among the population, they returned to their aerodrome without having undertaken any offensive action. This is the constant rule in the Italian but not in the Austrian service; even in nights of full moon the Austrians have dropped bombs on inhabited localities of the littoral and the Venetian plain between the mouths of the Po and the Isonzo."⁴

The practical limitations of the problem.—It will be seen, therefore, that to expect aircraft to abstain from bombardment in certain cases is not wholly an illusory hope, unwarranted by

¹ I.A.F. Report, 2 August, 1918.

² J. Mortane, *Les Vols émouvants de la Guerre*, 1917, p. 273.

³ Admiral Scheer, *Germany's High Sea Fleet in the World War*, Eng. trans., 1920, p. 208.

⁴ *Diario della Guerra d'Italia*, iii. 324.

practice. It is, in fact, a factor in the case upon which one is entitled to count, that air commanders and pilots will themselves be unwilling to inflict unnecessary damage upon the peaceful inhabitants of an enemy town. Reference to this point has been already made in the first chapter. Nevertheless, war is war, and it is mere self-deception to expect it to be waged with gloved hands. If there is an important military objective to be destroyed, if its destruction is a matter of vital moment for the attacker's national cause, then it will be attacked even if heavy incidental loss falls upon neighbouring innocent property and life. Provided all reasonable care is taken in such a case to confine the effect of the bombardment to the particular objective, the attacking airmen cannot be penalised because there is some unavoidable dispersion of their bombs.¹ What can, and should be, prohibited is the reckless bombing that shows a callous indifference to the wide repercussion of its effects and the sufferings of its innocent victims. The military advantage to be gained is clearly insufficient in some conceivable cases to condone the human holocaust that may be its price. To lay down a simple and universal formula is almost impossible. The nearest one can come to anything of the kind seems to the writer to be this :—

If a military objective is situated in such a densely populated neighbourhood, or if the circumstances of the case are otherwise such that any attack upon it from the air is likely to involve a disastrous loss of non-combatant life, aircraft are bound to abstain from bombardment.

The responsibility of bombing airmen.—Clearly such a formula leaves the whole matter largely to the discretion and judgment of the individual air commander or pilot. He must weigh the probable consequences of his action in circumstances which allow him little evidence to guide his decision and little time to make it. But every restrictive rule relating to air bombardment, short of actual prohibition, must be open to

¹ In the debate on the Air Estimates in the House of Commons on 21 February, 1918, Major Baird, Under-Secretary of State for Air, affirmed the principle that the bombardment of a military objective was legitimate even if it involved the risk of killing non-combatants. Speaking on Mr. King's motion that care should be taken in bombardments to avoid injury to non-combatants, Major Baird said : "Do not let us bandy words. It is impossible to drop bombs on any town—German, French, or English—without running the risk of killing women and children. Does the hon. member mean that we are not to drop bombs on German towns?"

Mr. King : "No."

Major Baird : "If that is not the hon. member's intention, then the whole of this amendment has no meaning whatever."

the same objection. The success or failure of the rule must depend upon the heart and conscience of the fighting *personnel* who will have to apply it.¹ Fortunately, in a force whose operating *personnel* are mainly officers, as those of most air services are, one can count upon a high standard of both honour and initiative in the individuals whose high duty it will be to create a custom and practice of air warfare.

The case of munition-workers.—In what is said in this chapter with reference to the sparing of civilian life it is important to take account of one special category of civilians. These are the workers, men and women, in munition factories. As Professor Rolland has observed,² they

“occupy a position intermediate between the combatants properly so-called and the non-combatants who continue to follow their peacetime pursuits and professions. The reasons for giving them a privileged position in regard to hostile action are losing much of their force. Fundamentally, these people are almost exactly in the same situation as men engaged in the auxiliary services of the armies. Now the latter are certainly exposed to violent measures.”

This statement by Professor Rolland has been criticised by Messrs. Mérignhac et Lémonon³ as failing to make the necessary distinction between munition-workers actually employed upon such work and the same persons when in their own homes. In the latter case they are in no way different from the ordinary population. It is only when actually at work in the munition factories that they can be regarded as holding a special position. When so employed they cannot be considered to be entitled to the immunity which otherwise they can claim.

¹ “In the last analysis the only protection which they [non-combatants] can hope for has its source in the conscience, goodwill, and humanity of the military commanders” (J. W. Garner, *La réglementation internationale de la Guerre aérienne*, in *Revue de Droit Int.*, 1923, p. 393).

² *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 554.

³ *Le Droit des Gens et la Guerre de 1914-18*, vol. i., pp. 646-7.

CHAPTER IX.

BOMBING : (II.) THE AIR WARFARE RULES.

The principle of the Air Warfare Rules.—In the preceding chapter the writer has tried to show how the partly rival, partly supplementary doctrines of the military objective and of the combat area may be worked into a *régime* of air bombardment that is satisfactory within circumscribed limits. Since it is a combination of these doctrines that is the principle of the Air Warfare Rules drawn up at The Hague in 1923, those Rules may next be conveniently examined. They must, however, be considered also in relation to the wider question of air bombardment as a whole, that is, of civilian as well as of military property, and they must consequently be read in the light of the observations in the succeeding chapter in this book. By themselves they do not constitute a complete and final solution of the problem of air bombardment. The criticisms in the present chapter, however, are confined to the terms of the Rules considered in relation to the limited object which they have admittedly in view, namely, the confinement of bombardment to military objectives only.

The terms of the Rules.—The Rules, other than those relating to hospitals, historic monuments, and other protected buildings, are as follows :—

Art. 22.—Aerial bombardment for the purpose of terrorising the civilian population, of destroying or damaging private property not of a military character, or of injuring non-combatants, is prohibited.

Art. 23.—Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

Art. 24.—(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives : military forces ; military works ; military

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establishments or depots ; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies ; lines of communication or transportation used for military purposes.¹

(3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph (2) are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

The meaning of "Aerial bombardment."—"Aerial bombardment," it will be observed, is not defined in the Rules. While the omission of a formal definition is perfectly sound, it would have been well to record in the Committee's Report the concurrence of the Powers in the view that the discharge of bombs, of shells from cannons, and of bullets from machine-guns, is covered by the term, and that the rules laid down apply also to the discharge or dropping of projectiles from electrically controlled, unmanned aircraft.

The prohibition in Article 22 is implied in the doctrine of the military objective. If that doctrine is developed in the direction of the recognition of bombardment of non-military property of certain kinds as legitimate ² the provision will have to be modified.

Bombardment to enforce requisitions.—Article 23 applies to air bombardment an unwritten rule of land warfare. The Land Warfare Rules, 1907, contain no authority for the bombardment of a town which refuses to comply with a demand for requisitions or contributions, and, by limiting bombardment

¹ The objectives referred to are, of course, *enemy* military forces, works, stores, etc. It need hardly be stated that aircraft are entitled to destroy *their own* army's munitions as well as the enemy's. Gen. Cadorna's report of 4 November, 1917, stated that "on the night of the 3 November, our aircraft flew to the left of the Tagliamento and destroyed depots of munitions which could not be removed during the withdrawal" (*Diario della Guerra d'Italia*, iii. 738).

² See chapter x.

to cases in which a town is *defended*, exclude implicitly the right to bombard in the event of such refusal. The reason is that "if requisitions are not forthcoming, the army proceeds to take them,"¹ and it is quite unnecessary to bombard the town. Naval forces, on the other hand, are allowed to enforce requisitions, for the immediate use of the warships concerned, by bombardment, but not to enforce money contributions.² Although the conditions in the air approach those on sea more nearly than those on land, the land war rule is, in theory, the better model, but whether in practice the prohibition of bombing to enforce requisition will amount to very much may, perhaps, be doubted.³

The principle of the Rules.—Article 24, it will be seen, begins by adopting in express terms the doctrine of the military objective. In so doing it marks a distinct advance and improvement upon the existing law of bombardment. As stated in the last chapter, the old test of "defence" is now obsolete, and in definitely abandoning that test and substituting for it the military character of the actual target the new provision rests on firm and unassailable ground, so far as its limited object is concerned.

It is also sound in drawing a distinction between bombardments within and those without an area of actual operations. That distinction is imposed by the circumstances themselves; air attack upon a place in the immediate neighbourhood of which fighting is proceeding is a different matter from air attack upon a place far removed from the scene of hostilities. Two observations present themselves, however, upon the Commission's actual draft.

"Military concentrations" in towns.—In the first place, the words of paragraph (4) of Article 24 might be read as legalising the bombardment of a city itself (within an area of operations) and not merely the military objectives therein. It is submitted that only the latter objectives may be attacked even in such a case; the principle of paragraph (1) of the Article governs all its provisions.⁴ Only military targets may

¹ A. Pearce Higgins, *The Hague Peace Conferences*, p. 355.

² Naval Bombardment Convention, 1907, Arts. 3 and 4.

³ See pp. 361-2.

⁴ Judge Bassett Moore (*International Law and some Current Illusions and Other Essays*, 1924, p. 199) appears to contemplate the bombing of the town (etc.) itself; he states that in such a case "the civil population would have been removed by its Government or put in a place of safety." That would be quite true of a village near the front line, but not, it is respectfully submitted, of a town or

be *directly* attacked, but, since war reigns in the locality, bombing airmen, in attacking them, must necessarily be allowed a wider latitude than where military objectives are being bombed in a city removed from the scene of operations. The measure of latitude thus to be allowed will vary with the extent of the military concentration. If a town has become to all intents and purposes a fortress or *place d'armes* it will inevitably be subject to air attack of a less discriminating and more widespread nature than that which would be justifiable if the "concentration" were an unimportant one. In paragraph (4) of the new rule stress is properly laid upon the necessary relation between the importance of the military concentration and the responsibility of the bombing air force for resultant damage to civilians. "Concentration" may mean anything. The term must be fairly and reasonably interpreted. Austria tried to justify the bombardment of Padua in December, 1917—January, 1918, on the ground that the town was "a concentration point of reserves and of material of war." The Italian official reply (3 January, 1918) pointed out that, judged by the results of the bombardment, the concentration cannot have been of importance, for in three nights' raids, though hundreds of bombs were dropped, not a single military objective was hit and the only results were the destruction of monuments and the killing of old people, women, and children.¹

Aircraft in naval operations.—The second observation which arises upon paragraph (4) of Article 24 relates to the reference to *land* operations. It is a little illogical to formulate the distinction between operational and other zones in terms of land operations only. It is true that zones of naval operations are so shifting and uncertain that they would lack the definiteness necessary if one rule is to prevail within the zones and another outside them. There is no reason, however, why the provisions of paragraph (4) should not apply not only to places in the immediate neighbourhood of the operations of land forces but to ports or towns which are actually being bombarded by a fleet. As the rule stands it favours the air forces operating with armies in comparison with those operating with fleets. The latter will be governed by the rules applicable to air attack outside a zone of land operations, unless it so happens that the coastal port

city: e.g. Lille, which was undoubtedly in the immediate zone of operations in the late war, continued to be inhabited by a large civilian population as before the war.

¹ *Diario della Guerra d'Italia*, iii. 1112.

which, *ex hypothesi*, is being bombarded from the sea, is also being attacked from land or is at any rate in the immediate neighbourhood of land operations. Normally it would not be subject to this double kind of attack. The disability in this respect of the fleet air arm is accentuated by the fact that the rules governing naval bombardment (i.e. by ships' guns) are still less restrictive than those applying to bombardment by air forces in a zone of land operations. The warships may range their guns over every part of a coastal town that is defended by an outlying fort of two; the aircraft must bomb only actual military objectives. Where the port or town is not in a zone of land operations, the aircraft must bomb only those objectives which can be attacked without the indiscriminate bombardment of the civilian population; no such restriction applies to the bombardment by the ships' guns. It follows that the aircraft, which will be used for "spotting" for the ships' guns, will be utilisable to direct the fire of the latter against objectives which they are themselves forbidden to bomb. One may illustrate the difficulty by an actual instance. During the Dardanelles operations, the R.N.A.S. machines "spotted" for the bombardment by the fleet of (*inter alia*) flour mills at Gallipoli town, and on one occasion four direct hits upon the mills were thus obtained at a range of 19,800 yards.¹ Under the Naval Bombardment Convention such a target was a legitimate objective, but it would not be so under the Air Warfare Rules; consequently, while aircraft could legitimately direct the warships' fire upon it, they could not, now, destroy it themselves by bombs.

The anomaly here referred to could be wholly removed only by bringing the naval bombardment rules into closer relation with those applicable to air bombardment. Something could, however, be done to remedy the present illogical position by making the rules applicable to air bombardment in a zone of land operations applicable also to the air bombardment of a port which is actually undergoing bombardment by a fleet.

Bombardment in long-distance raids.—It is when one comes to the bombardment of cities and towns outside a zone of operations that one is doubtful whether the new provisions will be found in practice to fulfil the generous hopes of their framers.

¹ See the account of the work of the R.N.A.S. in the Dardanelles in *Flight*, 17 February, 1916, for this incident; and as regards "spotting" in general by aircraft for the fleet there, see Major-Gen. Sir C. E. Callwell, *The Dardanelles*, 1919, p. 190.

Article 24, in paragraphs (2) and (3), aims at restricting the bombardment of such cities and towns by supplementing the basic provision of the Article (viz. that only military objectives may be bombarded) by two further provisions. The first is a definition, intended to be precise, of the actual military objectives which are subject to attack. The second is a prohibition of the bombardment of such objectives if it cannot be conducted "without the indiscriminate bombardment of the civilian population."

"Indiscriminate" bombardment.—The second of these provisions may be examined first. What, exactly, do the words just quoted mean? They cannot be a mere prohibition of the indiscriminate bombardment of the city or town as a whole; that is forbidden already by paragraph (1) of the Article, which limits legitimate bombardment to military objectives. It seems to be impossible to attach any other meaning to the words than this: that they prohibit the bombardment of even military objectives (in a city or town outside a zone of operations), if it cannot be conducted without such considerable and widespread incidental damage to the civil population that its results do not differ appreciably from a bombardment which is intended to be indiscriminate.

In other words, the provision makes the legitimacy of a bombardment dependent upon its results. It is by those results that the question will be judged, and, indeed, necessarily judged, whether the bombing force has, in fact, complied with the requirements of the rule or not. The intention will be less important than the effect. It is the bombed, not the bombers, who will be the judges. It is they who will decide, first, whether, if one of the bombing airmen is captured, he is to be arraigned as a war criminal, secondly, whether the enemy's action is such as to justify the nation attacked in resorting to reciprocal action and, indeed, in setting aside, in reprisal, all the restrictive rules of bombardment.

Indiscriminate bombardment in the great war.—The matter is a very important and a very difficult one. It can best be understood if one considers what happened in the great war. Of the bombardments which then took place, two things can be affirmed with absolute certainty. The first is that each country was convinced that the bombardments carried out by the enemy airmen were indiscriminate. The second is that each was equally convinced that its own airmen exercised care and discrimination in its bombardments and

that, in thus observing honourably the rules of warfare, the country placed itself at a disadvantage as compared with its less scrupulous enemy.

One knows how the German raids appeared to the mass of Englishmen. They were sheer and indiscriminate murder. The Kaiser was definitely branded as a murderer at coroners' inquests. Count Zeppelin was compared, as "a wholesale contriver of murder," to Dr. Guillotin, and, in his quality of "baby-killer," to Herod.¹ Yet it is certain that the German airmen did not intend to take innocent lives. There is no reason to suppose that the commander of the airship L. 15 was speaking other than the truth when he informed American press correspondents (in March, 1916) that "our object is to destroy the military works and factories of the enemy" and repudiated indignantly the charge that a German officer would deliberately set out to kill women and children. In a popular German book, written in 1916, the commander of a German airship is described as meditating whether he should give the order to drop bombs on Hull, where he sees below him panic-stricken crowds rushing for shelter. He thinks (we are told) of another crowd—a German crowd—upon whom not long before the enemy airmen had launched their bombs. "There, hundreds of children were lying in pools of blood. He remembers Karlsruhe! . . . No! We are Germans, Huns, barbarians. We do not make war on children . . . and the order remains unspoken."² Fiction, it may be, but the tale indicates the popular view. So, too, one may accept as representing the view of the German naval authorities the following statement of the commander of the High Seas Fleet:—

"It never was the object of an airship raid to attack defenceless dwelling-places," says Admiral Scheer.³ "Their aim always was to destroy those establishments which, either directly or indirectly, served some military purpose: munition factories, arsenals, stores, docks, wharves, etc."

He admits that the limitation of attacks to military objectives could not always be adhered to, "because of the difficulty of discovering these particular places, partly because just round London the defences were particularly strong," but he denies

¹ See *Pall Mall Gazette*, 3 February, 1916, and 9 March, 1917; *Daily Mail*, 4 February, 1916.

² *Zeppeline über England*, 1916, p. 114.

³ Scheer, *Germany's High Sea Fleet in the World War*, Eng. trans., 1920, pp. 207-8.

that there was at any time an intention to kill harmless civilians.

The sound patriotic view.—That the enemy airmen attacked, by preference, innocent civilians and their property, while the national air force confined its attacks to purely military objectives, was the firm belief in each of the belligerent countries. Evidence of it is to be found almost *passim* in the press and publications of the time. "Our airmen work in the light, when they choose points of military importance," one British paper stated early in the war.¹ "If civilians suffer, it is an accident, regrettable and unavoidable. The Zeppelins work in darkness, and if they have a military objective at all, they reach it by accident—if they have ever reached it." "We know," said another paper, two years later,² "that when our airmen are given such a task as the bombing of a definite objective behind the enemy's lines, they like to go near enough to be sure of hitting their target." The same comforting belief is to be found expressing itself in the German press. If there was anything which surpassed the settled conviction of the French and English people that the German airmen deliberately set out to kill non-combatants, it was the German conviction that the Allies' airmen did exactly the same.

"The — towns will no longer suffer under the bombs of the enemy airmen; we are going to quench the — lust for attack upon the — towns and the destruction of their goods."³

Any French or British paper might have used these words, filling the blanks with appropriate references to French or British towns and the German lust for attack; actually, the extract is from a German pilot's account of his departure for a raid upon Paris, and the three words omitted are "German," "French," and "Rhine" respectively. Compare with this view from the German side that of a gallant American volunteer serving in one of those very bombing squadrons which to the German pilot were the "villains of the piece." His squadron, V.B. 108 (a Voisin bombing squadron), attacked only troops, bivouacs, and the like—"not towns or cities or other localities where the lives of helpless women and children might be endangered."⁴

¹ *Pall Mall Gazette*, 17 June, 1915.

² *Daily Mail*, 3 April, 1917.

³ The extract is from an article by Lieut. Jaeschke in *Das Fliegerbuch*, 1918, p. 64. It refers to the Gotha raid of 8 March, 1918, upon Paris.

⁴ G. F. Babbitt, *Norman Prince*, 1917, p. 27, quoting a letter from Prince, dated 20 May, 1915.

The intention and the performance.—The fact is that what the airmen on each side set out to do and what they actually did were not always identical, at any rate in the long-distance raids. The German aeroplane raid upon London of 13 June, 1917, was described in a German semi-official message of 15 June, 1917, as having for its object the "docks, wharves, railways, Government stores, and warehouses situated in the centre of the town on the banks of the Thames." Actually, the chief damage done in that raid was done to an East End Council School, at which 120 children were killed or injured. It is entirely beyond question that the Allied airmen on their side set out to bomb military objectives only. What they did bomb, on some occasions at least, may be seen from the photographs which appeared in various war publications.¹

The difficulties of the bombing airmen.—It is hardly astonishing that it should have been so. Consider the conditions under which the raids, especially towards the end of the war, were frequently carried out. The bombing airmen were very far from being able to drop their bombs serenely and at their leisure. They were for the most part fighting for their own lives. The losses suffered by the bombing squadrons in the great war tell their own tale. On one occasion—the raid of 31 July, 1918, upon Mainz—seven out of nine machines of No. 99 Squadron, Royal Air Force, were shot down in the course of a raid; on another—the raid of 26 September, 1918, upon Metz-Sablons—the same squadron returned only one machine out of seven.² Another squadron, No. 104, lost seven out of twelve machines in a raid upon Mannheim on 22 August, 1918.³ A whole American flight of six machines was captured in an attempted raid upon Cologne on 11 July, 1918. Another, the 20th Aero Squadron, 1st Day Bombing Group, lost five out of seven machines on 26 September, 1918, in its disastrous raid upon Dun-sur-Meuse, and one of the two remaining machines brought back a dead observer.⁴ The German raiders suffered severe casualties in their later raids upon London. A French

¹ See, for instance, the photographs of the terrible destruction at Kaiserslautern, Mannheim, Trèves, Stuttgart, and Karlsruhe, given in Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 306-12, and in *La Guerre aérienne*, 5 April, 1917. It is an eloquent fact that in June, 1918, the insurance rates on lives and property in the Rhine towns were raised 38 per cent. (see *The Aeroplane*, 4 July, 1918).

² Squadron-Leader L. A. Pattinson, *History of 99 Squadron, Independent Force, R.A.F.*, 1920, pp. 30, 55, 56; Squadron-Leader A. A. Walser, *The Independent Air Force in the War*, in *Cavalry Journal*, 1922, p. 392.

³ M. Baring, *R.F.C.H.Q.*, 1920, p. 291; Pattinson, *op. cit.*, p. 35.

⁴ *New England Aviators* (New York, Houghton, Mifflin Co.), 1919, i. 113.

bombing squadron was practically wiped out in a day raid upon the Usines Mauser at Oberndorff in October, 1916.¹

The heights from which bombs were launched.—The height at which the raids were for the most part carried out were such as to make any real precision impossible. From what altitude it is possible to bomb a particular object is a question upon which the opinions of experts vary, and no doubt the technical accessories of bombing, such as sights, are better to-day than they were in 1918. In 1915, bombing from even less than 10,000 feet appears to have been regarded as a haphazard undertaking. So, at any rate, thought Field-Marshal Sir John French; in his dispatch of 22 March, 1915, speaking of the air attacks of 20 and 21 March upon Lille, St. Omer, and Estaires, he said :—

“ These bombs were dropped from a great height, in one case as much as 9000 feet. This, of course, prevented the airmen from taking deliberate aim at any military objective.”

In later stages of the war bombs were dropped from a far greater height than 9000 feet. In the daylight raid of 7 July, 1917, upon London, for instance, the German aircraft, which were estimated by press correspondents at the time to be flying at a height of 5000 or 6000 feet, were stated by Mr. Macpherson, Under-Secretary of State for War, to have actually been flying at a height of 12,000 to 15,000 feet, as ascertained by range-finding.² A German officer wrote :—

“ We soon outgrew the idea that 1500-2000 metres was the right height for either reconnaissance or bombing. The height chosen for these tasks was commonly 4000 metres. Even so, the enemy's anti-aircraft guns came devilish close.”³

The British raid of 24 December, 1917, upon Mannheim was carried out, according to a War Office *communiqué* of 30 December, 1917, at a height of over 13,000 feet. The German naval airships which raided London in 1915 dropped their bombs from a height of 2400 to 3100 metres,⁴ but the Zeppelins which carried out the attack of the night of 19-20 October,

¹ Article by M. Eynac in *La Guerre aérienne*, 17 October, 1918, p. 778.

² Statement in House of Commons, 17 July, 1917. In a paper on “ Recollections of the R.F.C. during the Great War,” in the *Army Quarterly*, April, 1923, Major Rothesay Stuart Wortley states that this raid was carried out at a height of 15,000 to 16,000 feet.

³ Armin von Bismarck in *Das Fliegerbuch*, 1918, p. 31.

⁴ *Der Krieg in der Nordsee* (German Official Naval History, Part IV.), 1924, pp. 336-7.

1917, launched their bombs from the enormous height of 17,000 to 19,000 feet.¹ It is true that some of the Allies' *night* bombardments were carried out from very low altitudes. That of the night of 25 August, 1918, upon Mannheim was from a height of 200 feet, and Ehrange was bombed on the night of 2 September, 1918, from a height of 90 feet. An Italian aeroplane bombed the station of Nabresina on 9 July, 1915, from a height of 100 metres.² But most of the day raids were carried out at a height of 12,000 feet or over. What chance was there of any given objectives being hit from such an altitude? The war pilots themselves were under no illusions upon the matter, at any rate. Fonck states that, in his bombing attacks, he always descended to a low height in order to make sure of hitting his objective, unless it was a case of *reprisal* bombing (as at Freiburg-in-Breisgau), when he remained at a height of 3000 metres or so.³ Lieut. B. A. Molter says that British pilots in 1918 used to descend to 500 or 600 feet altitude in attacking railway trains or switch-yards; it was found that bombing from 6000 or 8000 feet accomplished little—"of course," he adds sardonically, "for killing women and children that height is all right."⁴ M. Jacques Mortane is cynical upon the subject of the official reports of air raids, on both sides, with their specific details of the damage done.

"Note the *leit-motif*," he says, "of all the *communiqués*, whether Allied or enemy. 'The bombardment was fully successful,' 'The efficacy of the attack has been observed,' and other statements which the most experienced observers could not possibly record with certainty. Why throw powder in people's eyes when no one is deceived?"⁵

Elsewhere M. Mortane writes:—

"In the war reports there are always passages which make one smile, such as the dropping of ten bombs from a height of 2000 metres upon 'military establishments.'"⁶

The adverse weather conditions.—Not only the height from which bombs were dropped but the weather conditions under which many of the raids were carried out made it difficult for

¹ Statement by Mr. Bonar Law in House of Commons, 22 October, 1917.

² *Diario della Guerra d'Italia*, i. 166.

³ René Fonck, *Mes Combats*, 1920, pp. 31-2.

⁴ Lieut. B. A. Molter, *Knights of the Air*, 1918, p. 201.

⁵ J. Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 39. M. Mortane's remarks would no doubt apply equally to the reports in the Italian *communiqués* of bombardments carried out *con risultati visibilmente efficacissimi*.

⁶ *Ibid.*, ii. 35.

the airmen to ensure that their attack was limited to their intended objective. In each of the following raids carried out by the Independent Air Force in 1918 it was expressly stated in the official reports that, owing to clouds, mist, fog, or other weather conditions, observation of the results was difficult or impossible: Metz-Sablon, four raids, evening and night of 22 June; Thionville, 28 June; Thionville, Metz-Sablon, Frescaty and Boulay, night of 29 June; Coblenz, morning of 5 July; Coblenz, morning of 31 July; Karlsruhe, morning of 11 August; "Aerodromes and railways," night of 13 August; "two railway junctions," night of 16 August; Courcelles, night of 13 September; Metz-Sablon, Frescaty, and Trèves, night of 30 September; Metz-Sablon and Saarburg, night of 18 October; Baden, Karlsruhe and Burbach, night of 30 October; Saarburg, 3 November; Ehrange, 10 November. Similarly the Admiralty *communiqué* of 13 July, 1917, referring to the raids carried out against various objectives in Belgium on the preceding night, stated that "the visibility was generally very poor and in consequence observation of results was difficult." Again, on 1 November, 1917, the British official report stated that in the raid of that day upon Kaiserslautern, "cloudy weather impeded accurate bomb-dropping." On these occasions, and probably on others, it seems to be open to question whether the airmen who took part in the raids could really be certain that military objectives were alone, or even mainly, destroyed. One finds admissions here and there in the letters of bombing pilots that they had not, in fact, the faintest idea of what they had actually hit. Thus, the French *As de bombardement*, Lieut. Jean Baumont, describing, on 19 March, 1917, his daylight raid upon Frankfurt-on-Main of three days before, admits that he could not see where his bombs fell, and this was probably also true of his later raid upon the same city on 11 August, 1917, for he says that he started and returned on that occasion *par un temps de cochon*, many thick clouds obscuring vision.¹

Other evidence of the inaccuracy of bombing.—Evidence of the lack of precision in the bombing of the great war is to be found in some other events and statements of the time. The

¹ Letter quoted in *La Guerre aérienne*, 15 August, 1918, pp. 638-9. So, too, when Gen. Cadorna speaks in his report of 7 August, 1916, of the bombardment of Opicina by a Caproni squadron *in condizione atmosferiche avverse*, it is not an unreasonable inference that the observation of results was in fact impracticable (*Diario della Guerra d'Italia*, ii. 292).

stations both at Armentières and at Metz-Sablon were frequently bombed by the Allied airmen, yet they appear to have suffered extraordinarily little damage.¹ When the *Goeben* was ashore at Nagara Point in January, 1918, she was repeatedly bombed by the R.N.A.S. "Altogether some 270 flights were made and 15 tons of bombs were dropped. Only one of all these seems to have hit the cruiser."² The attempted provisioning of Kut-el-Amara by aeroplane throws an interesting sidelight upon the accuracy of bomb-dropping in 1916. If ever precision of aim was necessary it was then, for the sole remaining hope of the besieged army lay in the safe receipt of the supplies dropped within the fairly wide perimeter of the camp by the British aircraft. Yet on 22 April, 1916, no less than 400 lbs. of the sorely-needed food was dropped by mistake into the river and lost; and a smaller quantity had similarly been lost on 16 April.³

"Now and then they dropped a load into the river or into the Turkish lines. . . . It generally seemed to be the sailor-men who did this. Perhaps with the larger vision one acquires at sea, it was difficult to see so small a bit of land as Kut. These 'boss shots' gave occasion at any rate, so it was said, for the sending of facetious messages over the wireless to them down below: 'Would H.M. Navy mind dropping us something now and then instead of to the Turks?' 'Was the R.F. [Relief Force] quite sure it was on the right river?' and so forth."⁴

The fact that civilians were killed and injured in the bombardments is no proof that the bombing airmen did not try to limit their attack to military objectives. The very utmost degree of care was taken by the Allied airmen to avoid damage to the civilian inhabitants of Bruges and Brussels when the German military establishments in the suburbs of those towns were bombed, yet, beyond question, civilians and their property suffered in some of the raids.⁵ The story that the damage was done by the Germans themselves, who sent up their aircraft to bomb Bruges,⁶ is wholly incredible, and the more plausible contention that it was caused by the anti-aircraft shells is not

¹ As to Armentières, see W. Noble, *With a Bristol Fighter Squadron*, 1920, p. 95; as to Metz, C. Lafon, *La France ailée en Guerre*, p. 71.

² H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 104.

³ Sir C. V. F. Townshend, *My Campaign in Mesopotamia*, 1920, pp. 330, 333.

⁴ Major C. H. Barber, *Besieged in Kut, and After*, p. 223.

⁵ See the account by "An escaped civilian" in *The Times*, 11 December, 1917, and the series of articles by Mr. Humphrey Page, I.C.S., in *The Times*, 25 and 26 October, 1918, as regards the damage done in Bruges; and J. H. Twells, *In the Prison City*, 1919, pp. 144-6, as regards that done in Brussels.

⁶ See the article by Mr. Page referred to in last note.

supported by the experiences of London and other cities in regard to the comparative loss due to the defenders' artillery and the attackers' bombs. The German official report of 23 May, 1918, stated that "the enemy aerial attacks against Belgian territory, which have increased in frequency of late, have inflicted heavy damage and losses on the civilian population." There was probably a good deal of truth in this statement.

The facts given above and a detailed examination of the air raids of the great war lead one irresistibly to the conclusion that the pilots and observers concerned endeavoured to attack military objectives only and that, nevertheless, the bombardments were in many cases indiscriminate. Are the long-distance raids in future wars likely to be very different? If they are not, and if the rule laid down in paragraph (3) of Article 24 of the Air Warfare Rules is then an accepted rule of international law, the position may be worse, not better, than in 1914-18. Then, there was no definite rule forbidding indiscriminate bombardment; indeed, under the law of naval and land bombardments, it was legitimate to bombard a city indiscriminately if it was "defended." The position of London in particular, in regard to liability to air attack, was very doubtful. Mr. Balfour, it is true, stated in the House of Commons on 15 September, 1915, that "London is, as everybody knows—nobody knows it better than the Germans—a city which should not, under the law of civilised warfare, be the subject of this kind of attack." But Lord Montagu of Beaulieu stated equally emphatically in the House of Lords on 26 June, 1917, that "it was absolute humbug to talk of London being an undefended city. The Germans had a perfect right to raid London."¹ It required some moral courage to make such a statement (sound as it was) at the time, but Lord Montagu was not alone in holding the views which he then expressed. Mr. F. W. Lanchester, for instance, writing in 1916, stated that London was a legitimate object of attack as containing the administrative offices concerned with the direction of the war,² and a practically similar view was expressed a little earlier by two other technical writers.³ It could

¹ Lord Montagu's statement is referred to by Gen. von Hoepfner in his *Deutschlands Krieg in der Luft*, p. 113, where a quotation from *The Times* to the same effect is also given.

² F. W. Lanchester, *Aircraft in Warfare*, 1916, p. 121.

³ C. Grahame-White and H. Harper, *Aircraft in the Great War*, 1915, pp. 161-7, where the authors quote and accept the present writer's conclusion (in *Aircraft in*

not, therefore, be affirmed positively that the German raids were clearly contrary to international law. But when there is in existence, solemnly signed and sealed, a rule prohibiting all raids which cannot be carried out without the indiscriminate bombardment of the civilian population, the position will be more difficult and, perhaps, more dangerous. If history repeats itself, if the people of this country—of each country—are convinced that the enemy's attacks are indiscriminate, while their own air forces are still observing a law which hampers their freedom of action, there will arise a demand for reprisals which may end by sweeping away all restrictive rules whatever.

The classification of military objectives.—The prohibition of indiscriminate bombardment is one of the two means by which the framers of the Air Warfare Rules have sought to keep air attack upon civilian centres within the limits which humanity demands. The other is the precise definition of the objectives which may alone be attacked. Article 24 deals with these objectives by way both of definition and of enumeration. The first paragraph of the Article defines a military objective as "an object the destruction or injuring of which would constitute a distinct military advantage to a belligerent." The second paragraph proceeds to enumerate the objectives concerned. The enumeration is clearly intended to be comprehensive, not merely illustrative; the paragraph begins: "such bombardment is legitimate only when directed exclusively at the following objectives . . .," and prohibits by implication the bombardment of any other objectives. The enumeration is, in fact, a translation into terms of broad classes of actual objectives of the definition of principle expressed in paragraph (1). When one comes to the enumeration of objectives in paragraph (2), one is at once struck by the difference between the first four categories and the fifth.

The first four are very precise:—

- (1) *Military forces.*
- (2) *Military works* (i.e. fortifications and defences).
- (3) *Military establishments or depots* (depots being defined in the Commission's Report as covering "collections of supplies for

War, 1914) that various parts of London were liable to air attack. The question of the liability of London to be attacked was raised as long ago as 10 December, 1909, when Col. F. G. Stone read a paper before the Aeronautical Society of Great Britain. His conclusion was that the question was one not definitely settled, and he recommended an international understanding on the subject.

- military use which have passed into the possession of the military authorities and are ready for delivery to the forces").¹
- (4) *Factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies* (the last being again defined in the Report as covering supplies "which by their nature show that they are certainly intended for military purposes").²

The fifth category is :—

- (5) *Lines of communication or transportation used for military purposes.*

To this fifth category there is no reference in the Report, defining or exemplifying its meaning, corresponding to the references under the third and fourth categories. One might argue from the limitations in the preceding categories that only "lines of communications" in the narrow military sense, that is, from port to railhead in the theatre of operations, were intended; or possibly railways of a purely strategical or military character. But either of these interpretations would be too restrictive, and it is more probable that belligerents, declining to apply the "ejusdem generis" principle of interpretation to their disadvantage, will take the words quite literally. They could contend with some reason that if a more limited meaning had been intended in the provision it would have been clearly expressed.

Lines of communication or transportation.—One is then faced by the difficulty that, in a war of any magnitude, there is hardly a mile of rail or a single railway station which is not a "line of communication or transportation used for military purposes," and, therefore, subject to bombardment. The effect of the provision, if it is interpreted in the broad sense

¹ Not only stores which "have passed into the possession of the military authorities and are ready for delivery to the forces" should be included in this category, but *all* stores or material which are being manufactured, repaired, or held in military workshops or depots. The report does not bring out quite clearly enough the distinction between categories (3) and (4). In category (3) it is the *possession* of the stores or material by the fighting forces or service authorities that makes them liable to attack, even if they are not in a completed state or ready for issue to the forces; in category (4) it is their *character* as "distinctively military supplies" that does so.

² The words "arms, ammunition, or distinctively military supplies" would cover both (1) "battlefield material" (*matériel à usage de combat*), i.e. arms and ammunition; and (2) material of a military character (*matériel de caractère militaire*), though not battlefield material, i.e. uniforms, military equipment, and all stores which are clearly and essentially intended for the use of the fighting forces. They would exclude all stores which, though they *may* be used by troops, are of civilian character or type (e.g. clothing not yet made into uniforms, food supplies of all kinds not yet in army depots, petrol in bulk installations for general use, etc.).

which belligerents will probably apply to it, will, therefore, be to extend enormously the number of permissible objectives. Four sets of restrictive conditions precedent to the legitimacy of any given air attack are followed by a fifth expressed in terms so comprehensive, so all-embracing, that they render the prior restrictions nugatory. The final category "catches," in fact, whatever would be missed by the other four, and it is entirely unnecessary in practice to consider whether a town or city contains objectives of the first four kinds or not. It is certain to contain a "line of communications or transportation used for military purposes," in the shape of a railway over which troops or military stores are moved, and if it does, it would be idle to deny that a belligerent could find in the provision authority for bombing that line: which means, in practice, bombing the part of the city or town in which the line is situated. The carefully expressed restrictions of the connotation of "depots" and "distinctively military supplies" is consequently, in effect, nullified. The provision in regard to lines of communication is open, in fact, to the perfectly sound objection which Italy raised to the contention of Austria in the late war that the towns in the Venetian plain were bases of operations and centres of military revictualment, and, therefore, subject to air attack. The Italian official note of 28 January, 1918, pointed out that "in every town, in every village, of every country, there may be found soldiers or supplies of a military character. But every one knows that such presumably military objectives are a very small part of the inhabited area which is bombed."¹

The loose definition of lines of communication or transportation, when applied to docks and ports, will also tend to nullify to a great extent the more precise and narrow definition of military depots and munition factories contained in the Report of the Commission. Almost any dock or port would come within the definition in the fifth category, and, as such, would be a military objective. In practice, warehouses and depots stand beside docks and in ports and can hardly be separated from them for the purpose of air attack. The orders of the German Naval Staff for the bombardment of the London docks included specifically directions to attack also the depots of cereals, raw materials, and other stores at the docks.² Such

¹ *Diario della Guerra d'Italia*, iii. 1192.

² *Der Krieg in der Nordsee* (German Official Naval History, Part IV.), 1924, p. 414, giving the orders of 1 March, 1915.

depots would not be legitimate objectives under the terms of the new Rules, but the docks could apparently be so regarded, for they would almost certainly be used for the transportation of military stores; and, in practice, the liability of the docks to air attack would entail a similar liability upon the warehouses at their side.

The bombing of railway stations.—It is much to be desired that the provision should be reconsidered and that, pending revision, belligerents should attach to it, in their instructions to their air forces, a meaning less dangerously wide than that referred to above. The bombing of railway stations situated even in an inhabited city cannot be entirely prohibited. On 26 April, 1915, some 40,000 Germans were concentrating via Courtrai for an attack upon our troops, when Lieut. W. B. R. Rhodes-Moorhouse, R.F.C., who gained a splendid death and the V.C. by his deed, bombed the railway junction there, from a height of 300 feet. His feat, says Beach Thomas, "had the effect of a great strategical move"; it disorganised the whole German concentration.¹ The bombing attack of four British machines upon St. Quentin station in July, 1916, was hardly less productive of important military results. It caught the German troops at the moment of entraining, destroyed the train, scattered the men in panic, and exploded 60 wagons of ammunition. The 71st Reserve Regiment was so severely shattered, actually and morally, that it had to be sent back to billets.² Courtrai and St. Quentin were, however, in the combat area, and it was altogether a different matter when a great terminus like Liverpool Street Station, in the heart of London, was bombed and many innocent lives destroyed. Yet Liverpool Street Station was undoubtedly used in part for troop transportation. Where can the line be drawn? The question is an exceedingly difficult one.

Railways and stations in city areas.—The right solution, in the writer's opinion, is to treat as *military objectives* only railways, stations, and docks, which are either in the zone of operations or, if outside it, are used almost exclusively for troop or munition transportation. Other railways, stations, and docks will, it is true, be legitimate objects of attack, but

¹ Major C. C. Turner, *The Struggle in the Air, 1914-18*, pp. 209, 276. See also G. V. Williams, *With our Army in Flanders, 1915*, p. 328.

² M. Baring, *R.F.C.H.Q.*, 1920, pp. 156-7, who quotes from a semi-official statement issued in Paris on 17 August, 1916, given also in *Flight*, 31 August, 1916, and in *The Aeroplane*, 23 August, 1916.

they will be such, not as military objectives, but as belonging to that category of civilian property which can be bombarded under the principle of the law of devastation and subject to the condition that non-combatant lives are not incidentally destroyed. A line of rail in open country, or even a great railway station which is deserted (as it may be in the dead of night) would be subject to bombardment in accordance with this principle, but a railway running through a town or a station during working hours would be immune. The same principle would apply to a dock or harbour which could not be attacked by day without damage to civilian life and property. The Italian official report of 27 October, 1918, recorded the dropping of 400 kilogrammes of bombs by an Italian airship on the railway station of Levico, "surprised in full activity."¹ It is exactly the opposite condition to this, namely, when a station is completely inactive and deserted, that will be required to legitimatise air attack under the rules here suggested. Day-light attacks upon city termini would be banned, and the rules proposed, would, in fact, make illegitimate *by day* such a raid as that carried out by the Independent Air Force against Bonn on 31 October, 1918, when, according to the official report, our airmen "attacked the station in the centre of the town."

The bombing of factories.—The effect of the provision in Article 24 that only those *factories* which constitute "important and well-known centres engaged in the manufacture of arms, ammunition, or *distinctively military supplies*," are liable to bombardment, will be to render illegitimate in future a very considerable number of the raids which were carried out in the late war. Undoubtedly objectives were then attacked which would not come within the terms of this provision. It is not always easy to say what exactly was the nature of the objective in some of the raids upon industrial districts; the *communiqués* speak of "factories," "workshops," or "industrial establishments" without specifying whether they were engaged in munition work or not. But in many cases it is clear that the target attacked was not a munition factory within the restrictive definition of Article 24, and it is to be presumed that operations of this kind will not in future be permissible. Blast furnaces and steel works were repeatedly attacked, as the references given below show, and it cannot be held that the product of either kind of establishment is a "distinctively

¹ *Diario della Guerra d'Italia*, iv. 550.

military supply." The product of a blast furnace is pig-iron ; that of steel works is steel, which would only become a " distinctively military supply " after it has undergone the further and distinct processes of armour-plating, or else has been cast in steel ingots for big guns in works which would never be designated as " steel works " but rather as " armament works." In the Admiralty *communiqué* of 17 November, 1916, referring to the raid upon the Essingen Works at Hagendingen, it was stated that the blast furnaces and steel works attacked were producing steel used in the construction of big guns. By no legitimate interpretation of Article 24 could it be held that, even if the culmination of the processes which begin when the iron-ore is loaded into a blast furnace is a cannon, the iron or the steel is in itself a " distinctively military supply " or becomes anything of the kind until a much later stage than that at which the metal has left the steel works (used in the ordinary significance of the term) or, of course, the blast furnace. Still less could the ore which is taken from an iron mine be termed a distinctively military supply. Now, it is entirely beyond question that objectives such as these were frequently bombed in the late war by both sides. In a list of the objectives of the Independent Air Force in its raids upon the industrial centres of Germany, the first two items are : " (1) Iron and coal mines ; (2) iron ore *bassins*, where most of the blast furnaces were to be found." ¹ Under Article 24 (2) of the Air Warfare Rules it would certainly be held that neither of these items would now be a permissible objective. Many other instances could be quoted. Take, for example, such a case as that of the Italian raid of 8 July, 1917, upon the mercury mines and extracting works at Idria in Carniola, or that of the Austrian raid of 4 May, 1916, upon the sulphur factory at Ravenna. Neither mercury nor sulphur can be said to be a " distinctively military supply," both being used also for industrial purposes.² In an official *communiqué* issued by the *Agenzia Stefani* it was stated at the time that the mines at Idria were producing exclusively for military ends ; ³ so, too, in all probability were the Ravenna sulphur works. But would they come within the terms of the

¹ Paper by Squadron-Leader A. A. Walser on " The Independent Air Force in the War " in *The Cavalry Journal*, January-October, 1922, p. 389.

² Sulphur, for instance, is very extensively used in the manufacture of rubber and of wood-pulp for paper-making ; mercury for gold and silver extraction, for barometers and thermometers, for electricity meters, for mirrors, etc.

³ See the statement of the *Agenzia Stefani* in *Diario della Guerra d'Italia*, iii. 208.

very restrictive rule in Article 24? It is very doubtful. As regards electric power stations, it is often hard to say whether the raids which took place in the great war would now be legitimate under the new rule. A raid such as that of the British and Italian air forces against the great water-power electricity station at Cavedine, north-west of Riva (Trentino), on 4 May, 1918,¹ would, no doubt, still be legitimate, for this power station supplied the current for the electric railway from Trent to Fucine, an important link in the Austrian Army's line of communications, and could, therefore, probably be regarded as a part of the line of communications itself. The French attack on the electric station at Beautor² would also presumably still be a permissible operation, for that station supplied the current for the German barbed wire entanglements along the front and was, therefore, in effect, a portion of the defence works. The power station of a munition factory would similarly be part of the factory, but it would not apparently be possible to regard one which supplied power and light to a whole town or district, and, incidentally, to some munition factories therein, as a military objective within the terms of the new rule. Many of the raids directed against electric stations in the late war would consequently now be illegitimate, and the same is true of most of the attacks upon gasworks. Petrol deposits or installations and oil tanks would similarly now be outside the category of permitted objectives unless they could be regarded as part of a military establishment.³ The fact that a general installation of the kind supplied petrol for military as well as other purposes, would not be sufficient to bring it within the scope of Article 24.

Factories bombed in the great war.—Below, the writer gives a list of objectives which were attacked in air raids during the last war, and this list will suffice to show that the effect of the new restrictive rule which would now exclude such objectives is very far from being one of purely academic importance. In the list account is taken only of deliberate attacks on objectives named in the official reports of the attacking belligerents. The thousands of cases in which various objects which were not in any circumstances legitimate objectives were, in fact,

¹ See *The Aeroplane*, 22 May, 1918, quoting *The Times* special correspondent's report.

² See *La Guerre aérienne*, 5 April, 1917, p. 324.

³ The *depositi di nafta per sommergibili*, which the Italian airmen bombed at Pola on 24 August, 1918 (*Diario della Guerra d'Italia*, iv. 307), would be part of such an establishment.

damaged, either by accident or as a result of the repercussion of attacks on legitimate targets, are ignored. No reference is, therefore, made to any such cases as those of the bombing of Hagenbeck's circus at Karlsruhe by French airmen, of an L.C.C. School in London by German airmen, of various churches and monuments in Northern Italy by Austrian airmen, or of the Bulgarian crops and fields which, according to the Bulgarian and German reports,¹ the Allied airmen bombed, but which were not stated to have been the objectives of any raids mentioned in the French and British reports. The writer has also ignored, for the present purpose, the German accounts, probably largely imaginative, but, no doubt, containing some truth, of the raids carried out against objectives in England or Egypt, such as those given by the anonymous author of *Zeppeline über England*, by von Buttler-Brandenfels in *Im Marineluftschiff gegen England*, and by Hans Henkelburg in *Als Kampfflieger am Suez-Kanal*. Granaries, warehouses, and other objectives which would now be excluded are stated to have been bombed in these accounts. The places mentioned below are those at which objectives of the kind named were attacked in the raids referred to in the British, French, Italian, Russian, German, and Austrian *communiqués*, indicated by the letters B., F., I., R., G., and A. respectively, followed by the date of the *communiqué*. It will be seen that the nature of the objective as given in the reports is in no case specifically characterised as military, and as in other cases (not here given) care is taken so to characterise certain objectives, it is a reasonable assumption that all the objectives here quoted are *not* of that character, and one must, therefore, conclude that they stand outside the closely restricted category of factories which would be permitted targets under Article 24, paragraph (2).

Actual bombardments which the new Rules would have forbidden.—*Aqueduct* north-west of Constantinople, supplying that city with water (R., 28.3.17).

Benzine, benzol, etc. See *Petroleum*.

Blast furnaces at Algrange (F., 10.11.16), Burbach (F., 24.1.17, 21.6.17; B., 19.7.18, 21.9.18, 31.10.18); Dillingen (F., 26.9.16, 25.11.16, 28.12.16); Esch (F., 11.2.17; B., 4.9.18); Hagondange (F., 23.10.16, 25.10.16, 11.11.16, 28.12.16, 10.2.17, 11.2.17); Maizières-les-Metz (F., 11.2.17, 16.2.17);

¹ See Bulgarian official reports, 14 June, 1916, 19 June, 1916, and 13 July, 1916; and German official report, 6 June, 1917.

Middlesbrough (G., 4.5.16); Pussinges (F., 23.10.16); Rombach (F., 15.9.16, 16.9.16, 26.9.16, 28.12.16, 10.2.17, 16.2.17); Saint Ingbert (Saarbruck) (F., 13.11.16); Saare Valley (F., 11.2.17, 21.6.17); Stockton (G., 4.5.16); on bank of Tees (G., 2.4.16); on bank of Tyne (G., 4.4.16); Uckingen (F., 16.9.16, 16.2.17); Voelklingen (F., 24.11.16, 17.3.17); Wadgassen (B., 19.7.18); Whitby (G., 6.4.16); Woelfling (F., 4.3.17).¹

*Boot factory at Pirmasens.*²

Electric works, power stations or installations, at Ancona (A., 11.12.15, 18.1.16); Lorrach (Baden) (F., 21.4.15); Freiburg (B., 14.3.18); Kreusewald (east of Saarbrücken) (B., 23.5.18, 28.5.18); Maizières-les-Metz (F., 16.4.15); Mulheim (Baden) (F., 27.8.15); Nonnenbruch (bombed on 11.2.15, see French official "Eye-witness's" report, 20.2.15); Ostend (F., 18.11.16, referring to British raid; B., 12.7.17); Paris,³ Venice,⁴ Voelklingen (B., 31.10.17).⁵

Gasworks, gasometers, or gas conduits at Ancona (A., 4.4.16); Differdange,⁶ Dover (G., 19.3.17); Esch,⁶ Landau (B., 20.5.18); Metz (F., 24.2.16); Pirmasens (B., 30.10.17); Thionville (B., 3.5.18)⁷; Trèves (B., 18.2.18, 27.2.18); Trieste,⁸

Grain silos at Constantza (G., 9.9.16).

Iron works or foundries at Middlesbrough (G., 10.8.16); Nounkirchen (F., 28.12.16); Rombach (F., 13.9.16); on bank of Tees (G., 2.4.16); Uckingen (F., 13.9.16); Whitby (G., 6.4.16).⁹

¹ It is probable that the references to the bombing of "factories" at Hagondange, Rombach, and Maizières in F., 17 and 18.10.17, and 8.1.18, and of "furnaces" at Voelklingen in B., 15.5.18, and at Dillingen in B., 13.6.18, are also references to *blast furnaces*.

² Bombed by British aircraft on 11 December, 1917 (see Air Ministry *résumé* of bombing work issued to the press at the end of February, 1918).

³ See air raid operation orders quoted by Siegert in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, p. 446.

⁴ See extract from Austrian airman's experiences quoted in *Aeroplane*, 1 December, 1915; *Flight*, 3 December, 1915.

⁵ M. Baring states, under date of 2 August, 1916, that two electric power stations at Brussels were bombed (*R.F.C.H.Q.*, 1920, p. 165). This is not mentioned in the official reports.

⁶ Not given in French official reports, but see *La Vie aérienne*, 13 March, 1919, p. 171, as to the raids on *gas conduits* at Differdange and Esch.

⁷ Gasworks at Thionville were also bombed by British aircraft on 18-19 February, 1918, according to the *résumé* of bombing work issued by the Air Ministry at the end of February, 1918.

⁸ See *La Guerre aérienne*, 27 June, 1918, p. 534.

⁹ The "foundries" referred to in the French *communiqués* of 13 November, 1916, and 19 March, 1917, and the British *communiqué* of 21 October, 1917, as being bombed at St. Ingbert (Saarbruck), Thionville, and Saarbrücken, respectively, were also probably *iron foundries*.

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Magneto works (Bosch) at Stuttgart (F., 10.10.16; B., 31.7.18).

Mines, Mercury, at Idria (I., 8.7.17); *unspecified*, at Nonnenbruch (F., 10.9.18).

Motor works (Daimler) at Stuttgart (B., 10.3.18, 31.7.18, 15.9.18).

Oil tanks at Constantza (G., 6.9.16, 9.9.16; Bulgarian, 13.10.16); at Vlora (A., 11.10.16).

Petroleum or benzol depots or refineries or wells at Cattaro on 4.10.17¹; at Fiume on 1.8.16²; at Middlesbrough (G., 10.8.16); Pechelbronn (between Hagenau and Wissembourg) on several occasions,³ at Ploeshti (Roumania) (G., 5.9.16); Pola,⁴ and Salonika (G., 28.3.16).

Post office at Castel (Bari) (A., 25.5.16).

Steel works at Thionville (B., 15.1.18, 22.1.18, 25.1.18, 18.2.18); at Voelklingen (B., 12.11.16, 31.10.17).

Sulphur factory at Ravenna (A., 4.5.16).

Warehouses in London (G., 8.7.17, 25.9.17, 30.9.17, 1.10.17).

Water reservoir at Dottigliano (I., 18.9.16).

Waterworks at Hampton (near London) (G., 15.10.15).⁵

Other probable cases.—The instances given above are those in which specific objectives of a kind now excluded by the terms of paragraph (2) of Article 24 of the Air Warfare Rules are stated to have been attacked. There are also references in the official reports to attacks upon "industrial zones," "factories," and so on, without indication of the precise nature of the objectives, and it is probable that in the raids thus referred to blast furnaces, steel works, gasworks, power stations, or other objectives of the kind set out above were also attacked. What proportion of the long-distance raids of the late war will now be ruled out if the new rule is strictly interpreted, it is impossible to say with any precision upon the evidence available, but that it will be a very considerable proportion there can be no doubt whatever.

¹ See *Diario della Guerra d'Italia*, iii. 539.

² *Ibid.*, ii. 273.

³ See *La Guerre aérienne*, 16 August, 1917, pp. 639-40, and 27 September, 1917, p. 731.

⁴ See *Diario*, iv. 566.

⁵ It was the pumping and power station of the waterworks that was bombed (see *Der Krieg in der Nordsee*—German Official History, 1924, p. 337). No doubt many other unrecorded cases of the bombing of waterworks occurred; Lieut. H. I. F. Yates was awarded the M.C. for bombing waterworks at some place unspecified (*London Gazette*, 28 March, 1916). Water reservoirs and tanks were also bombed in circumstances in which they could be regarded as military establishments, e.g. by British airmen at Bir-el-Hassanah (Reuter's correspondent, 25 March, 1916) and at Rodh-Salem (British Official, 25 May, 1916).

Warning before bombardment unnecessary.—The Air Warfare Rules are silent, it will be seen, on the subject of preliminary notice before air bombardment. It would be impracticable to insist upon warning in the conditions in which air attack is usually undertaken. In land and naval bombardments notice is usually given, but may be omitted in special circumstances. The Land Warfare Regulations prescribe that "the officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, *except in cases of assault*."¹ The Naval Bombardment Convention lays down that "if *the military situation permits*, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities."² In air bombardment, the provisos which qualify the rule as to notice in land and naval bombardments would ordinarily be applicable, and it was not the practice in the great war to give notice.

The view that bombing must be preceded by a warning has been expressed *per incuriam* by some writers,³ but is not supported generally by jurists of repute.⁴ It is true that in a few very exceptional cases warning was actually given by the attacking aircraft in the late war. In October, 1914, German aeroplanes dropped in Warsaw pamphlets in Polish, warning the people of the coming bombardment and advising them to stay indoors during it.⁵ In December, 1914, warning of an intended Zeppelin attack on Nancy was given by a German aeroplane the day before, but the aeroplane also took the opportunity to drop a couple of small bombs on its own account! The "proclamation" which it dropped stated that seven Zeppelins would come to bomb Nancy each night, and one did

¹ Art. 26, Land Warfare Regulations, 1907.

² Art. 6, Hague Naval Bombardment Convention, 1907.

³ See, for instance, Mérignhac et Lémonon, *Le Droit des Gens et la Guerre de 1914-18*, vol. i., p. 650, who complain that the Austro-German air bombardments were *sans avertissement préalable*, en violation de l'article 26 du Règlement de la Haye. M. Lacroix, *Le Domaine aérien et la Guerre*, pp. 285-6, states that the same view, which he does not himself support, is held by Clunet, *De l'Emploi abusif des Aérostats de Guerre par les Allemands* in the *Journal du Droit Int.*, 1916, p. 391, and by W. Loubat, *Le Droit des Gens et la Guerre de 1914*, in the *Revue politique et parlementaire*, 1915, p. 372. See also a paper on "Reprisals" by Mr. W. Barnard Farraday, LL.B., Barister-at-law, in *The Aeroplane*, 26 September, 1917, where it is stated—quite incorrectly—that the Germans were bound under international law to give twenty-four hours' notice of each raid upon a city.

⁴ See, for example, Oppenheim, *Int. Law*, ii. § 158; Garner, *Int. Law and the World War*, ii. p. 471; Fauchille-Bonfils, *Droit Int.* (1921), ii. § 1440 (30).

⁵ See *The Aeroplane*, 25 November, 1914, quoting from *The Times* correspondent at Warsaw, but adding some sensible comments.

come, but something appears to have interfered with the continuance of the programme, for it was not followed by any others.¹ Again, on 30 December, 1914, a German airman dropped in Dunkirk a note stating that a Zeppelin would come on 3 January, but weather apparently prevented the arrival of the unwelcome visitor, for although a Zeppelin was reported at Cassel that night, it did not reach Dunkirk.² Another case is reported by Mr. Maurice Baring : he states that at midnight on 28 July, 1915, the Germans dropped three bombs on St. Omer town and "they also dropped a message to say that they were going to bomb the town daily throughout the next week until it was destroyed." They did return, dropped three more bombs on 30 July, but apparently were then contented with their work.³ These few cases were, however, rather in the nature of "freaks," and the vast majority of air bombardments were preceded by no notice, other than that given by the authorities of the country attacked, by means of sirens, maroons, bugles, etc., or by the sight and sound of the approaching aircraft. Indeed, the system of warning adopted in all the belligerent countries went far to make any notice from the attacker's side unnecessary, and it would, in any case, be futile to make any other warning obligatory under convention.

Compensation for breaches of the rules.—As the Report of the Commission of Jurists states, paragraph (5) of Article 24 of the Air Warfare Rules, which makes a belligerent violating the provisions of the Article liable to pay compensation for losses caused to persons or property, will find a more appropriate place in the Convention to which the Rules will eventually become an annexure. There is a precedent for such a provision in Article 3 of the Convention of The Hague, 1907, relative to the Laws and Customs of War on Land. That Article provides that :

"A belligerent party which violates the provisions of the said Regulations [for land warfare] shall, if the case demands, be liable to pay compensation."

It must be confessed that the provision of 1907 has not proved to be of much practical value. It is true that in the peace treaties which terminated the great war the Allies demanded,

¹ J. Mortane, *Les Vols étonnants de la Guerre*, 1917, p. 257.

² Report of *Times* Special Correspondent on Belgian Frontier, 4 January, 1915, *The Times*, 6 January, 1915.

³ M. Baring, *R.F.C.H.Q.*, 1914-18, 1920, p. 103.

and the vanquished States were forced to accept, an admission by the latter of their liability to pay compensation for various infringements of the laws of war.¹ But a similar liability was imposed and admitted in regard to damages resulting from ordinary *faits de guerre*, and the precedent is, therefore, of little value for the present purpose.

Compensation was paid by belligerents in the late war in a few cases in which neutral nationals suffered damage to person or property as the result of the mistakes of belligerent airmen. Germany compensated the Swiss nationals whose property was injured by bombs accidentally dropped in Switzerland; France did the same. Great Britain paid the sum of £10,000² as compensation for the damage done by bombs dropped by British airmen on 29 April, 1917, on the Dutch town of Zierikzee.

¹ See, for example, Arts. 231-44, and Annex I. appended to these articles, of the Treaty of Versailles, 28 June, 1919.

² Made up of the two sums of £7748 (see *Flight*, 31 January, 1918) and £2252 (see *Flight*, 2 May, 1918).

CHAPTER X.

BOMBING: (III.) CIVILIAN PROPERTY.

Bombing for a political or psychological end.—As has already been explained in the first chapter of this book, it is unlikely in the extreme that belligerents will be satisfied with a right to bombard for purely military purposes only. There is ample evidence that aircraft may be used in future wars, not merely to attack military objectives, but also to destroy property generally in the enemy's country. The object of their attack will be moral, psychological, and political rather than military: ¹ the aim will be so to disorganise and disturb the life and business of the enemy community as to make it impossible for the enemy State to continue to resist, and at the same time to create in the enemy population as a whole a feeling of depression and hopelessness, to make the whole nation war-weary, *kriegsmüde*, *fatigué de guerre*. An undisclosed intention to employ the air arm in this way is not necessarily disproved by an acceptance of the Air Warfare Rule (Article 22) which forbids attack upon civilian property. One must reckon with the possibility of a State's accepting that prohibition but qualifying tacitly its acceptance by the proviso, necessary on grounds of ordinary common-sense and practicality, that, while non-military objectives will not be directly attacked, there is nothing to prevent—indeed, it is impossible to prevent—air forces from so bombarding military objectives that non-military property will be very far from escaping scot-free. Such a proviso is the kind of *subauditur* to a written rule of which the history of the restrictive laws of war presents

¹ Undoubtedly some of the air attacks in the late war had a political rather than a merely military end in view. Marshal von Hindenburg (*Out of My Life*, Holt's translation, 1920, p. 358), writing of the German offensive of May, 1918, says: "The sensitive point of the French front was the direction of Paris. At the time the political atmosphere of Paris seemed to be heavily charged. Our shells and attacks from the air had hitherto not produced the explosion, but we had reason to hope that there would be an explosion if we advanced our lines nearer to the city."

more than one example. Indeed, belligerents are really driven to strain the interpretation of the rules of war when these are so framed that, while ideally admirable, they are in practice unworkable. Much of the difficulty surrounding the observance of all restrictive rules arises from this divorce between precept and practice. It would be far better if jurists and statesmen were to face the facts and to recognise practices which will, in any case, exist and which cannot be entirely prohibited but may, perhaps, be controlled.

Bombing of civilian objectives.—The right to bombard certain categories of purely civilian property should be recognised and regulated. Only so will it be possible to bring the rule and the practice into relation with one another. The right is one which, in the writer's view, is required to give the air arm the same freedom of action as the older arms have acquired in the bombardment of defended cities. As stated in chapter viii, land and naval forces do, in practice, bombard for a psychological purpose, for the custom of war allows them to range their guns over the whole of a city which is defended in any part. But the right now claimed for air forces, though analogous to this right of general bombardment, cannot be regarded as based upon or derived from it. It must be justified on distinct and substantive grounds. As M. Pillet¹ and M. Fauchille² are both at pains to point out, the naval and land war right to bombard a city as a whole is founded on the right to assault, to take, and to *occupy* the city. It is, indeed, a heritage of an age when customs of war were more barbarous and perimeters of defence were more restricted than now. Its origin goes back to the time when to defend a city after a summons to surrender involved the forfeiture of the lives of all its occupants upon its subsequent capture by main force and when, moreover, cities were defended from their narrow circuit of walls, a breach in which might be effected as the result of a fire started at any point within. No question of occupation can ordinarily arise in the case of air bombardment, and, therefore, says M. Fauchille, only *le bombardement de destruction* (i.e. of military objectives) and not *le bombardement d'occupation* can be regarded as translated from the sphere of land or naval war to that of air attack. It does not, however, follow, as MM. Pillet and Fauchille contend, that no right to bombard

¹ Pillet, *La Guerre actuelle et le Droit des Gens*, in *Revue de Droit Int.*, 1916, p. 428.

² Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (25).

non-military property can be claimed for air forces. Assuredly such a right will be asserted in practice, and it would be wiser for jurists to accept this fact and to seek to regulate the right rather than to deny its existence. Otherwise one will simply drive belligerents to use the right to bombard military objectives in such a way that it amounts, in fact, to quite a different thing, namely, the right to bombard for the general purpose of breaking the enemy's moral. Any right of the latter kind, the writer submits, must be based not on the older rights of bombardment, but on the quite separate war right of *devastation*.

The question of law.—Would the devastation by aircraft of property not of a military character be a permitted method of war? The question is not entirely a new one. The danger to which undefended inland towns are exposed as a result of the use of aircraft for war is not, indeed, essentially different from that to which undefended, coastal towns have been exposed since high-angle fire from warships became practicable. The ethics of the latter kind of attack have been examined by a great English jurist and his conclusions have a bearing upon the present question.

Devastation by naval forces.—In 1882 the French Admiral Aube expressed in the *Revue des Deux Mondes* his opinion that

“armoured fleets in possession of the sea will turn their powers of attack and destruction against the coast towns of the enemy, irrespectively of whether these are fortified or not, or *whether they are commercial or military*, and will burn them and lay them in ruins, or at the very least will hold them mercilessly to ransom.”

His views were supported by professional naval opinion both in France and in England.¹ W. E. Hall denounced them as a flagrant mis-statement of the international law of bombardment. His remarks on the subject of ransom need not be here reproduced. In regard to the other question involved, that of the devastation of commercial towns as a measure of war, he holds that the argument that “every means is legitimate which drives an enemy to submission” is “a plea which would cover every barbarity that disgraced the wars of the seventeenth century.”

¹ In Parliamentary Paper C. 5632 of 1889, there will be found a report presented to Parliament by a Committee of Admirals appointed to consider, *inter alia*, the question of cruiser raids upon an enemy's coasts and unprotected towns and the levying of contributions. The Admirals stated that in their opinion such operations were feasible, and “we know of no means more efficacious for making the enemy feel the pinch of war than by thus destroying his property and touching his pocket” (see T. E. Holland, *Studies in International Law*, 1898, p. 104).

W. E. Hall's views on devastation.—Emphatic though this denunciation is, it must be read in the light of Hall's views on the subject of *devastation* in war ; for it is only on the right of devastation, in the present writer's submission, that the right of aircraft to attack other than military objectives can be based. Now, it is unquestionable that Hall takes an unduly narrow view of the war right of devastation. He regards it as legitimate in two cases and in two cases only : first, when

"destruction is a necessary concomitant of ordinary military action, as when houses are razed or trees cut down to strengthen a defensive position, when the suburbs of a fortified town are demolished to facilitate the attack or defence of the place, or when a village is fired to cover the retreat of an enemy " ;

secondly :

"when really necessary for the preservation of the force committing it from destruction or surrender ; it would even be impossible to deny to an invader the right to cut the dykes of Holland to save himself from such a fate." ¹

The practice of war.—Now it is unquestionable that the *custom* of war allows devastation in a class of cases which Hall's two categories would not cover. The cases referred to are those exemplified by Sheridan's and Sherman's devastations of Virginia, Georgia, and the Carolinas in 1864-65, and Kitchener's devastation of the Boer Republics in 1901-02.² The purpose of these devastations was to deprive the enemy's forces of supplies and shelter. Admittedly they were justified only as an extreme measure of military necessity, but they cannot be said to have constituted infractions of the laws of war. They would, indeed, be condemned under the principles advocated by Hall, but other jurists would hold them to be legitimate measures of war. Pasquale Fiore, for instance, goes as far as to say that

"devastation, burning, deliberate destruction of establishments, buildings, and, in general, all enemy property, are authorised when required for success in the war that is being waged." ³

¹ W. E. Hall, *Int. Law*, 1917, § 140*, § 186.

² See the writer's *War Rights on Land*, 1911, pp. 133-40. Sir Frederick Smith (now Lord Birkenhead), *International Law* (Coleman Phillipson's edition), 1918, pp. 215-17, is not prepared to accept Hall's denunciation of the Aube proposals as being wholly sustainable in law. He states that the most effective way to meet Aube's suggestions is to say that such a mode of belligerency has never been practised or sanctioned, that it is an inhumane one, and that it would lead to reprisals.

³ Pasquale Fiore, *Le Droit int. codifié*, Art. 1053, quoted Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1091.

A more moderate and acceptable rule is laid down in the American official manual of "Rules of Land Warfare, 1914," where it is stated (§ 334)—

"The measure of permissible devastation is found in the strict necessities of war. As an end in itself, as a separate measure of war, devastation is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army."

More briefly, The Hague Rules of 1907 forbid all destruction of the enemy's property unless it be "imperatively demanded by the necessities of war."¹

Devastation by aircraft.—Hall's denunciation of the bombardment of undefended towns is now reinforced by The Hague Convention of 1907 relating to naval bombardment. That Convention, however, does not prohibit a naval commander from ranging his guns over the whole of a city which is "defended" in any part, and as any commercial city worth attacking would almost certainly be defended—if only by an outlying fort or two—the prohibitory rule amounts, in practice, to very little. In any case, as already explained in chapter viii, the existing rules are inadequate under the new conditions of air warfare. The question is now whether any modification, and if so, what, is necessary to adjust them to those new conditions. Is it, in fact, permissible to devastate and destroy property, not of military character, for the purpose, not of cutting off an army's supplies, but of so disorganising and disturbing the enemy's life and business as to induce him to make peace? And, if it is permissible to do so, must that devastation and destruction be carried out without loss of civilian life, or do the circumstances of air attack justify a departure from the existing rule also in this respect?

Bloodless devastation not illegitimate.—The writer finds it difficult to contend, or to quote authority for the contention,² that the principles of international law prohibit such bloodless destruction of even non-military property as is necessary for the winning of a war. If a nation could be forced to make peace by such destruction, it would be mere pedantry to hold

¹ Hague Land Warfare Rules, Art. 23 (g).

² The condemnation by the Institute of International Law (Venice, 1896) of bombardment "intended solely to bring about the submission of a country by the destruction, not otherwise justified, of peaceable inhabitants and their property," obviously envisaged the destruction of life as well as property, and is not, therefore, pertinent to the limited question here at issue, which is the destruction of property alone.

that it was illegitimate. One has only to consider for a moment the alternative presented by the older method of warfare, with its terrible toll of death and injury, its long-drawn-out agonies and brutalities, to see the objections to a method which would eliminate all this in their true perspective. There are, indeed, for destroying the kinds of property defined later in this chapter almost exactly the same arguments as for capturing and destroying property at sea. Why should a shipping office be sacred and the ships which it administers not, provided in both cases that human life be safe-guarded?

Devastation involving limited loss of life.—The other question is more difficult. If air forces could destroy property without incidental loss of life, the answer would be easy. Unfortunately, loss of life is to be apprehended, and the problem is how to frame a rule in such a way as to prevent that loss, or at the least to reduce it to a minimum; in other words, how to reconcile the demands of air power and those of humanity. Neither the one nor the other can be allowed undue weight. If air forces cannot carry out the devastation of property without great incidental loss of life—one cannot, for the moment, speak more precisely—then clearly Hall's verdict would be justified, and international law must step in to prohibit a method of warfare which would bring us back to the days of Tilly and Pappenheim. If, on the other hand, some but not an excessive loss of life can be shown to be involved in operations which will enormously abbreviate the periods of wars and will reduce to a comparatively trivial total the casualty lists and the huge but incalculable sum of indirect losses consequent upon hostilities, then it is submitted that humanity will gain and not lose from the recognition of the legitimacy of the new method.

The differentiation of objectives.—The solution of the problem is to be found in a clear and precise definition of the kinds of property which are subject to attack from the air. One may ignore for the present purpose all *military objectives*, such as barracks, military storehouses and depots, and munition factories. As stated in the last chapter, these are always subject to attack; and, as a belligerent cannot allow himself to be prejudiced because his enemy locates such objectives in places where they cannot be destroyed without incidental injury to civilians, he is not responsible for the resulting damage provided all due care is taken to prevent unnecessary injury. The bombardment of military objectives is subject to a dif-

ferent rule, and a less stringent one, than is that of the non-military property now in question.

Private dwellings and growing crops.—Dealing with the latter kind of property, one may first rule out all private dwellings. Their destruction by aircraft could not be achieved without inevitable loss of human life. No doubt the moral of the enemy population would be affected by attacks upon them, but such attacks would, in the first place, be repugnant to humanitarian sentiment, and, in the second, would involve, if they were to be carried out on a sufficiently large scale, the use of air forces which could be better employed for other purposes. The words of M. C. Lafon, an experienced war pilot and shrewd observer, in regard to the destruction of *crops* are applicable also to the destruction of private dwellings. It is true that air forces were employed in the great war to destroy the Bulgarian corn-fields on various occasions,¹ but the circumstances there were special and it is in any case doubtful whether the results obtained were important enough to justify the operations. On the general question of the use of aircraft for such a purpose, M. Lafon states, *à propos* of a suggestion made in July, 1916, that the Allies' aircraft should be employed to drop incendiary bombs on the German crops :

"We have not even sufficient pilots, machines, and bombs to render untenable the enemy's supply centres (railway stations and depots). That we should be able to find the bombs to cause, over the enormous area involved, a really material damage to his crops, is not for one moment to be believed."²

For air forces to attack either growing crops or private dwellings would be simply not worth while. A bombing operation, apart from all other considerations, costs money, and to destroy either from the air or by artillery property which is of no

¹ A Bulgarian official report of 17 June, 1916, stated : "Lately the British and French have been destroying our harvest by dropping bombs. On Friday four French aeroplanes dropped bombs of special make with the object of setting fire to the fields. They caused several fires, which were immediately extinguished." Again, on 13 July, 1916, the Bulgarian official report stated : "The enemy persists in his attempts to destroy the fruits of the labour of the peaceful population in the lower valley of the Mesta by daily dropping incendiary bombs with the object of burning the crops already cut." A German *communiqué* of 6 June, 1917, reported that "on the eastern bank of the Struma English airmen dropped incendiary bombs on the ripening cornfields."

² C. Lafon, *La France ailée en Guerre*, p. 143; see also p. 238, *ibid.* As regards the suggestion that bombs should be dropped on the German crops, Herr Brettreich, Minister of the Interior, replying to an interpellation in the Bavarian Lower House on 28 February, 1918, stated : "I would like to state for your assurance that little is to be feared from enemy incendiary bombs on our field crops."

military or political consequence is a useless and expensive undertaking. Some remarks of Mr. Warner Allen, the British Press representative with the French armies, in January, 1916, on the subject of the destruction of innocuous villages by high-explosive shells are as applicable to aircraft as to artillery bombardment. He quoted the case of Souchez. The cost of the shells used to destroy that village would, he estimated, have sufficed to build it up again "fifty or a hundred times over." A certain viaduct in the village was repaired at the beginning of the war at a cost of £14,000; the shells used by the Germans to demolish this viaduct must have cost, it was calculated, £80,000.

Retail business and commercial districts.—For similar reasons air attack upon retail shops and, generally, the retail business and commercial districts of cities and towns is unlikely to commend itself to a belligerent who wishes to use his air forces to the best advantage. The bombardment of such objectives could not but cause immense loss of life and the suffering so caused could not be justified by any military or political necessity. What, then, it will be asked, is left for aircraft to attack, other than those specific military objectives as to which no question can arise?

Property subject to attack.—A very great and important mass of property remains—the kind of property which cannot be destroyed without an enormous reaction and effect upon the whole life of the community, but which can be destroyed—if the restrictions shortly to be specified are observed—without any serious loss of life. Broadly, this class of property consists of the buildings, establishments, installations, and means of communication which are essential for the conduct of the everyday business of a modern organised society and are yet either not "inhabited" at the times to which, it is suggested, air attacks should be restricted, or not "inhabited" at all. Included in this class of property would be all important railways and their termini and junctions, docks, piers, bridges, roads, canals, waterworks, gasworks, electricity generating stations, warehouses, bonded stores, timber and coal yards, possibly even (because of the moral effect of the destruction of a means of recreation) race-course and football and cricket grand-stands, stadiums, bull-rings, and empty casinos and theatres;¹ and—pre-eminently—the great factories of all

¹ An empty theatre—the Verdi theatre at Padua—was bombed by German airmen in the late war (*Diario della Guerra d'Italia*, iii., 1112).

kinds, whatever they produce (whether soap or underwear or whisky), the produce and metal exchanges, the establishments of the large financial and commercial corporations and insurance companies, Government and municipal offices, and, in general, all those buildings which, by day "hives of industry," nerve-centres of the pulsating life of business and commerce, fountain-heads from which all the channels of administration flow, are deserted or practically deserted by night.

Government offices.—It is obvious that to bomb certain kinds of these buildings in ordinary working hours would cause very great loss of life. Take, for instance, a large Government office. Some offices, such as Admiralties and War Offices,¹ would, no doubt, be regarded as "military objectives," and as such would be liable at all times to bombardment. But others, like Education and Health Ministries, would as clearly fall outside the military category, yet would, it is submitted, be legitimate targets under the conditions to be indicated. Their destruction would be a means of disorganising and confusing the ordered routine of the nation attacked. Indeed, some jurists would regard as liable to bombardment in all circumstances buildings used as the seat of Government, though others, fearing that the result of so regarding them would be to afford belligerents an excuse for air attacks upon cities otherwise not liable to bombardment, would declare immune all Government offices, permanently established in peace time and situated in undefended towns.² It is clear in any case that if Government offices and the records which they contain could be destroyed in some way not repugnant to humanitarian sentiment, it could hardly be contended that such an operation was a forbidden measure of war. The case of a great factory employing, perhaps, some thousands of workmen is not dissimilar, for the present purposes.

It should be added, to prevent misconception, that munition works and war industries are not here in question. They would, no doubt, be in full activity by night as by day, but, then, they are *military objectives* and, as such, can be bombed at all times (see chapter viii).

Night attack alone permissible.—Now the offices, factories, business premises, etc., in question have this in common that

¹ The Constantinople War Office was bombed on 9 July, 1917, by the R.N.A.S., and the War Office there by the R.A.F. on 7, 23, and 27 July, 1918.

² See Garner, *La réglementation de la guerre aérienne*, in *Revue de Droit Int.*, 1923, p. 386.

they are not, for the most part, tenanted by their habitual population for the whole twenty-four hours. Centres of human activity and industry by day, they are practically deserted by night. Is it unreasonable to demand that they should be subject to air attack only by night? Is it not a just and necessary condition to attach to the recognition of their liability to air bombardment that such bombardment must be rigidly and absolutely restricted to the hours when it is unlikely to entail disastrous loss of life? Herein, so far as the writer can see, lies the best hope for a workable compromise between the interests of belligerency and the interests of humanity, and it is one which both sides would be well advised to accept.

It seems almost as if fate had foreseen the dangers which aviation threatened in war time to our great cities and had been working slowly, surely, to create a situation in which they would be minimised. For years there has been a growing tendency for those parts of the cities which are most active by day to empty themselves by night. The nightly evacuation which the Austrian air raids brought about in the Venetian towns in the late war¹ is already, in fact, a normal practice in the lives of all great cities, so far as their large warehouses, wholesale establishments, banks, financial, industrial, and governmental offices are concerned.

Night bombing in the great war.—Belligerency could accept such a restriction the more readily because, in practice, air bombardment will almost certainly be largely a night operation in future wars. In the great war bombing was at first carried out almost altogether by day. Night flights had, indeed, been practised before the war, but little had been done in this direction before 1915.

The first French night-bombing raid was that of 31 December, 1914, upon Metz.² The development of night bombing

¹ In *The Times* of 23 February, 1918, Mr. Ward Price describes how people in the towns of the province of Venetia made a pilgrimage on all moonlit nights to the country, carrying with them the bedding which they required in the tiny villages and scattered farm-houses where their nights were spent. In the morning they "trekked" back to the towns for their daily labours. "When you come into a town after sunset it is depopulated. Even the townspeople who stay have formed the habit of taking up their quarters in the refuges directly the sun goes down."

² Mortane, *op. cit.*, i. 120. This is probably the raid described by André C.H.A., *Au-dessus des Batailles (Carnet de Guerre d'un Aviateur)*, 1917, pp. 119-31. Lt.-Col. B. Roustam Bek (*Aerial Russia*, 1916, pp. 129-33) describes a night-bombing raid, undertaken by a Russian pilot and two observers over the German lines in Poland, "in the very early days of the campaign"; but there is rather too much picturesque detail to make the story a very convincing one.

by the French aircraft was accelerated by the heavy losses which the day bombers, operating from Malzéville, near Nancy, sustained during their raids into Germany in the autumn of 1915.¹ M. Laurent Eynac, deputy and member of the Army Commission, himself a bombing airman, has described how the way which seemed to be opened into the heart of Germany by the successful French raids upon Karlsruhe, Ludwigshafen, Trèves, Dillingen, and Saarbruck, in 1915, was suddenly closed by the activities of the German fighting planes in the autumn of that year. The heavy French bombing planes, slow at manœuvring, fell an easy prey to their lighter, faster opponents. Brindejone des Moulinais records in his diary under the date of 29-30 May, 1916, that "bombardment is becoming impossible by daylight."² What was to be done? It was almost in desperation that the French authorities turned to night bombing. Thanks to Capt. Laurens and some other courageous officers, that which had been thought impossible was achieved and night bombing was successfully organised.³

In night-bombing work the French airmen were able in a short time completely to out-distance their opponents. Some experiments in night flying had been carried out in Germany before the war, and at the end of January, 1915, the German air squadron at Ostend succeeded in bombing Dunkirk successfully by night. But progress was slow, and the German higher command appears not to have appreciated night bombing at its full value.⁴ The first German attempts on moonless nights were not made until June, 1917, where the French night bombers had already to their credit a long series of brilliant operations.⁵ By August, 1917, the French aircraft were dropping over four times as many bombs by night as by day.⁶

It was left, however, to the British air service to achieve the finest work of the war in the domain of night raiding. The operations of the 8th Brigade of the R.F.C. during October,

¹ Paper by Commandant Féquant in *L'Aéronautique pendant la Guerre mondiale* (Ed. Brunhoff), 1919, p. 41.

² Quoted in *La Guerre aérienne*, 22 March, 1917, p. 299.

³ Paper by M. Eynac in *La Guerre aérienne*, 31 January, 1918, p. 186; see also, as to the heavy losses among the French day bombers in 1915-16, Jauneaud, *L'Aviation militaire et la Guerre aérienne*, 1918, pp. 148-9.

⁴ Oberleutnant Siegert, in Neumann, *Die deutsche Luftstreitkräfte im Weltkrieg*, pp. 438-40.

⁵ Capt. Personne, in Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i., 322-6.

⁶ Mortane, *op. cit.*, i. 272. The disproportion was reduced later in the war: in the period 21 March to 15 August, 1918, the French dropped 778 tons by day and 1523 by night. (Mortane, *op. cit.*, ii. 448.)

1917, to June, 1918, and subsequently of the Independent Air Force during its brief but glorious existence for the five months that ended with the armistice, were carried out mainly by night. In all, some 550 tons of bombs were dropped by the Independent Air Force, and of these 390 tons were dropped by night.¹ Judging by what happened in 1917-18, one is justified in expecting that long-distance bombing, at any rate, will be carried out more largely by night than by day in future wars.² The organisation of the bombing squadrons of most of the Powers is based upon a differentiation between day and night operations, and there is little doubt that the rôle assigned to the night bombers will be of the first importance.

Night bombing more precise.—The bearing of these remarks upon the question here considered will be the more apparent when it is grasped that night bombing can be, and probably is, more certain and precise than day bombing. The two French night-bombing experts, Capt. Personne and Commandant Laurens, emphasise this point. "Bombing aircraft," says the former, "can execute by night most of the missions which can be assigned to them by day. Precision of fire should be greater. The bombers are less troubled by artillery and are not subject to attacks from fighting machines."³ The procedure of night bombardment, says Commandant Laurens, makes it possible to attain "an extreme precision of fire against objectives of any extent."⁴ A British night-bombing officer, Lieut. R. H. Reece, has described the careful and almost leisurely way in which the British bombers carried out their task:—

"The Huns, I imagine, often wondered why British bombers flew about a town for such a long time before bombing," he says.⁵ "The British bombers were not making war on women and children; they were intent on destroying a poisonous gas factory or other targets of

¹ Dispatch of G.O.C. Independent Air Force, issued in *London Gazette*, 1 January, 1919.

² Capt. René Fonck (*L'Aviation et la Sécurité française*, 1924, p. 132) contemplates the main use of the "aviation of defence"—the *chasse* machines—as being by day, and that of the "aviation of offence"—the bombers—by night.

³ Quoted by Mortane, *Histoire illustrée de la Guerre aérienne*, i. 257-62. The comparative precision of night bombing is also mentioned by J. Chevalier in a paper, *Le Bombardement de Nuit par Avions*, in *La Guerre aérienne*, 12 July, 1917, pp. 547-9; see also C. Lafon, *La France ailée en Guerre*, p. 76. F. Lacroix (*En Plein Ciel*, 1918, p. 197) observes that night bombing has the advantage over day bombing in two respects—first, that at night it is possible to descend to a much lower altitude and thus to obtain better results; secondly, that the moral effect is greater.

⁴ Quoted in Mortane, *op. cit.*, i. 302.

⁵ R. H. Reece, *Night Bombing with the Bedouins*, 1919, p. 65.

military importance ; so they flew about a town until the target was accurately located."

So, too, the French Adjutant Cartault, describing in a letter of 9 August, 1916, a long-distance night bombardment in which he took part on 7 August, says : "We are able to take aim almost in tranquillity."¹ A German flying officer has placed it on record that he and his fellow-pilots, once they had crossed the barrage, were able to bomb Paris "undisturbed in the interior of the circle of fire."²

It is true that bombing aircraft were in some instances—not many—brought down by night-flying fighting (*chasse*) aircraft towards the end of the war.³ It is true, also, that the balloon barrages, anti-aircraft fire, and blinding searchlights were an obstacle to low descent and careful aiming,⁴ yet, in spite of all these hindrances, bombing airmen again and again launched their bombs at night from a few hundred feet of altitude.⁵ There is a great mass of evidence in the official reports and *citations* ("mentions") in support of the contention that night bombing was carried out in the great war at heights which would have been impossible by day and, further, that very considerable accuracy of aim was attained in consequence.⁶

¹ Quoted in *La Guerre aérienne*, 27 September, 1918, p. 734.

² Lieut. Jaeschue, in *Das Fliegerbuch*, 1918, p. 67.

³ See, for instance, Gen. Cadorna's report of 7 April, 1916 (*Diario della Guerra d'Italia*, i. 920), referring to the bringing down of two Austrian aeroplanes by Italian aircraft at night, and British G.H.Q. report of 18 September, 1918, for the bringing down of three large German night bombers by our aircraft. The French expert, Commandant Jauneaud (*L'Aviation militaire et la Guerre aérienne*, 1923, p. 132) states that, in his opinion, "if the war had lasted a year more, *l'aviation de chasse* would have become a formidable arm by night as by day, and would have considerably affected the use of night bombing." Nevertheless, night bombing appears to have been carried out throughout the war without any great interference from hostile aircraft.

⁴ See R. H. Reece, *Night Bombing with the Bedouins*, p. 77 ; C. Lafon, *Les Armées aériennes modernes*, 1916, p. 255.

⁵ Thus, at Mannheim, on the night of 25 August, 1918, bombs were released at a height of 200 feet, despite searchlights, anti-aircraft fire, etc. (I.A.F. report of 27 August, 1918). The *citation* of 12 October, 1916, of the French pilot, Adjudant J. A. Gindre, stated that he carried out a long-distance raid and launched his bombs "à très faible altitude . . . en dépit des projecteurs ennemis, d'une violente cannonade et du feu des mitrailleuses" (quoted in *La Guerre aérienne*, 29 November, 1917, p. 44).

⁶ See, for instance, the British Independent Air Force report of 3 September, 1918, of the raid of the night of 2 September, upon Ehrang, when bombs were dropped from 90 feet and "every bomb obtained a direct hit." The awards of decorations to flying officers frequently refer to the low heights at which they carried out night-bombing raids ; see, e.g. *London Gazette*, 28 March, 1916, for award of M.C. to Capt. J. E. Tennant, who bombed an enemy aerodrome at night at a height

An American expert's view.—Brig.-Gen. William Mitchell, of the United States Air Service, states that "great accuracy results from night bombardment," and he quotes the case of a German attack upon Nancy as an instance of the precision attained:—

"There was an ammunition factory within the city which was, of course, well known to the Germans. One night they attacked this with 1200 lb. bombs. The first bomb hit a small house facing the street in front of the factory; the next bomb hit the corner of the factory, demolishing that whole side of it; the third bomb hit the middle of the factory and completely destroyed it. That factory made no more shells during the rest of the war. A few nights after this, in the same city, a train loaded with gasoline and oils stood in the station. I saw the Germans hit this train directly, blow it up, and cause a fire which burned everything in that vicinity."¹

The precision only comparative.—Gen. Mitchell's statement must, however, be read as meaning that the degree of precision attained in night bombing is only a comparative one. Bombing, whether by day or by night, is far from an exact science; absolute accuracy is impossible. "Bombs," says M. Lafon, "are wanting in precision (*peu précises*) and inclined to disperse, despite the ability of the bombing officer."² In the last chapter the writer has already given many facts which go to prove the truth of this statement. There is little doubt that the bombing on both sides in the late war was to some extent indiscriminate, and this was true of both day and night attacks, though less true of night attacks delivered from a low altitude. It would be unwise in the extreme to deal with this question of air bombardment on the assumption that bombing can be carried out with mathematical accuracy, that

of 30 feet; *London Gazette*, 18 October, 1917, awards of M.C. to Capt. W. J. Tempest and J. A. Boret, for night bombing at very low altitudes; *London Gazette*, 26 September, 1917, awards of M.C. to Capt. R. B. Bourdillon and Lieut. G. K. Smith, for low bombing; *London Gazette*, 17 May, 1918, award of bar to D.S.C. to Flt.-Lieut. L. H. Slatter, for bombing Ostend seaplane station at night from 400 feet; *London Gazette*, 3 August, 1918, awards of D.F.C. to Capt. T. A. Batchelor and R. C. Savery and Lieut. H. Fall, for low bombing of enemy towns, etc., at night; *London Gazette*, 26 March, 1918, award of M.C. to Capt. H. T. O. Windsor for low bombing on night raids; *London Gazette*, 21 September, 1918, award of D.F.C. to Capt. H. B. Wilson, for same. As regards French cases, see *citations* of Sous-lieut. (*observateur*) Baronna for night bombing "à faible altitude" (*La Guerre aérienne*, 5 September, 1918, p. 693) and of Lieut. Richet (same, 17 October, 1918, p. 781). One of the most famous French specialists in low bombardments was the old rugby international, Lieut. Maurice Boyau (see *La Guerre aérienne*, 24 October, 1918, pp. 797-9).

¹ Brig.-Gen. W. Mitchell, *Our Air Force*, 1921, pp. 63-4.

² C. Lafon, *La France ailée en Guerre*, p. 235.

the airman hits always what he intends to hit, or that any high degree of precision is, or will be in the near future, obtainable.

Anti-aircraft defence as affecting responsibility for damage.

—The assumption that a particular objective can be segregated and attacked from the air without risk of damage to neighbouring property—and such an assumption is at the basis of many of the proposals for the restriction of bombardment—cannot be justified. All that one can say is that it should be possible to localise the attack better by night than by day. One cannot assume that night-bombing aircraft will be allowed to fulfil their mission free from the distractions which make day bombing difficult. Searchlights, guns, balloon defences, night-flying chaser planes, will have to be reckoned with, but it should, nevertheless, be possible usually for bombing aircraft to descend to a lower altitude to deliver their attack by night than by day. The picking out of particular buildings may not be practicable, but it should not be impossible to confine the attack to a circumscribed area. The kind of property which is here in question is, in fact, usually situated in a city area which is non-residential, and there should be no insurmountable difficulty in distinguishing between such an area and the urban districts which are sometimes termed “dormitory,” i.e. those in which the city population live and sleep. A complication may, indeed, be introduced if the areas containing large warehouses or offices are defended; if they are, the other belligerent cannot be denied the right to bomb at any time the actual anti-aircraft defences. It is, however, conceivable that belligerents may adopt a policy of defending by ground defences only important military objectives—barracks, naval dockyards, munition factories, service aerodromes, etc. To defend adequately non-military property may prove to be a task beyond the powers of even the most lavishly equipped army or air force, and it may be found better to concentrate upon the protection of various points of great military importance. Another reason for adopting such a policy will be the mutual recognition by belligerents of the advantage of abstaining from any action which would have the effect of lessening each other's strict accountability, before the bar of public opinion, for any loss of life accompanying the bombardment of non-military property. Such bombardment, if the writer's view is admitted, will be subjected to a much more stringent rule in this respect than the bombardment of military objectives. Objectives of the latter kind are always liable to attack

and if a belligerent chooses to place them where they cannot be destroyed without great incidental loss to neighbouring property and life, it is he and not the attacker who must bear the responsibility. With non-military objectives, however, the responsibility rests with the attacker: he must attack only under conditions in which incidental loss of innocent life can be reduced to a minimum. Now, if the defending belligerent establishes anti-aircraft defences round non-military objectives, he tends to weaken his opponent's responsibility in this respect: not because he thereby frees his opponent from the obligation to bomb the non-military property with precision, but because, by forming the ring of defences—guns, winches for balloon-cables, searchlights—he furnishes the attacker with *military objectives* (namely, the guns, winches, etc., themselves), which, though situated, *ex hypothesi*, in the immediate neighbourhood of the non-military objectives, may be bombed in accordance with the less stringent rule applicable to such (military) objectives. It is, therefore, not wholly improbable that, recognising this, belligerents may leave the non-military objectives in question undefended;¹ and if they do, then bombing aircraft, especially at night when the attentions of defending aircraft are less to be feared *en route*, should be able to localise their attacks with very considerable precision.

Continuity of air attack not precluded.—If it is objected that under a *régime* which confined the bombardment of non-military objectives, in effect, to the hours of darkness, the recurrent hammer-stroke effect which many authorities consider important and would achieve by following up night by day attacks upon the same place, could not be obtained, it may be pointed out that, at all events for some time to come, there will be in cities and towns military objectives which can be attacked by day. In any case, even if all military objectives are eventually located outside civilian centres, certain non-military targets which could legitimately be attacked by day (e.g. gasometers, reservoirs, or other large objects which can be attacked without much danger to life) would still remain.

¹ They will hardly, however, go to the length of lighting up their towns containing the non-military objectives, as the Germans lighted up Metz at one period during the war when the Allied squadrons abstained from attacking it. Capt. Paul Bewsher (*Green Balls*, pp. 73, 79) tells how he and his fellow-pilots, on their way to bomb the blast furnaces at Hagendingen, saw Metz brilliantly lighted; when they were returning, having dropped their bombs, it was plunged in darkness, in order not to serve as a guide to them on their way back to Ochey-les-Bains.

The view of M. Eynac.—It is noteworthy that, starting from a different point of departure and looking at the matter from a different angle, the French aviation expert and statesman, M. Laurent Eynac, arrives at a conclusion which is not materially different from the present writer's. He has formulated the view that the rôle of aircraft operating by day should and will be mainly a *military* one, while that of those operating by night will be essentially *political*. This conclusion, which he explains in a paper "The Policy of Bombardment," written early in 1918, he reaches without any reference whatever to the legal side of the question, and it may therefore be quoted as independent evidence of the practicability of the doctrine of air bombardment put forth in the present book. For it shows that there are technical reasons in favour of conducting by night the long-distance air operations which have a political rather than a military purpose. Given that purpose, there can be no disadvantage but rather an advantage in concentrating the attack upon those objectives or urban districts the destruction of which is likely to cause the maximum disturbance and dislocation of the business and economic life of the country attacked. Now, the objectives and districts in question are just those which are almost or entirely emptied by night of their normal day population.

M. Eynac states his view as follows :—

"We must distinguish between *l'aviation de jour* and *l'aviation de nuit*; they employ different machines, they follow different methods, they attack different objectives, they pursue different ends. Day aviation is specially an aviation of combat, capable of participating in the diverse phases of battle, of acting in *liaison* with the other arms, under the orders of the general command, of carrying out such operations as are necessary against points sensitive to attack.

"The other aviation, that of night, is essentially an aviation of destruction and reprisals, its rôle the carrying out of operations of intimidation and long-distance raids, its employment beyond the zone of battle governed less by military than by political, diplomatic, and consequently governmental considerations."¹

In a later article, M. Eynac speaks of the work of night bombers as being especially one of "destruction and panic," whereas that of day bombers is more akin to "combat" work.²

The limitation of the size of bombs.—Secondary only in importance to the question of precision of aim is that of the size

¹ See *La Guerre aérienne*, 28 February, 1918, pp. 250-1.

² Article on "Pour l'Aviation de Bombardement" in *La Guerre aérienne*, 25 July, 1918, p. 586.

of the bombs dropped. In the late war the bombs used were for the most part small. M. Mortane gives particulars of the number and weights of the bombs dropped in the region of Paris in the night raids during 1918. The vast majority were bombs of 5, 10, or 50 kilos; some of 100 kilos were dropped, and 5 (in all) of 300 kilos each.¹ On the side of the Allies bombs of 1650 lbs. weight were available before the end of the war, and that weight is likely to be exceeded in the wars of the future. Indeed, a bomb of two tons' weight appears already to have been dropped as an experiment in the United States. The appalling effect of such a discharge of high explosive upon an objective situated in a crowded locality needs no description. At Washington the leading nations of the world agreed to limit the tonnage and armament of battleships. It is as important in the interests of humanity to come to some agreement for the limitation of aerial bombs. Outside a zone of operations, at any rate, that is, in long-distance bombing operations, it should be possible to arrange that bombs in excess of a defined weight should not be dropped upon objectives situated in cities and towns. There is little advantage in restricting attack to particular kinds of targets, carefully defined, if the bombs used against those targets are so enormous that their radius of effect extends far beyond the limits of the objective attacked. The use of incendiary bombs against objectives situated in crowded localities might also, perhaps, be regulated.

Summary of this chapter.—It may be useful here to recapitulate and summarise the views expressed in the preceding pages. The question is whether there can be held to exist a war right to bomb property of a definitely non-military kind. It arises because, as explained in the first chapter, air power is unlikely to be satisfied for long with the right to attack military objectives only and will claim almost certainly the right to bombard also for a political or psychological purpose, that is, for the purpose of destroying the moral and the will to resist of the enemy nation. That purpose can be pursued, so long as the rule of the military objective alone prevails, only by straining the rule and misapplying it to an ulterior and illegitimate end. Unless and until the right of air power to attack property the destruction of which will affect the economic life and business of the enemy people is admitted, the problem of air bombardment cannot be regarded as solved.

¹ J. Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 314-15.

The right of bombardment which air power will thus claim must be clearly distinguished from that of the bombardment of military property. The latter right is founded on the existing law of naval and military bombardment. It is merely an extension to the air of a right and a practice already claimed and exercised by land and sea forces. The right to destroy civilian property is an entirely different thing. It derives and, in the writer's submission, can only derive from the old war right of *devastation*. That right has hitherto been held to be a definitely restricted one. It has been like Shylock's right to his pound of flesh : *it has not given the right to shed one drop of blood*. It has also been held to extend only to the destroying of property which would be required for *the maintenance and accommodation of the enemy's fighting forces*.

Now the question which arises is whether, under the new conditions, international law should recognise a relaxation of the old war right of devastation, thus doubly circumscribed, and what the nature of that relaxation should be. It will begin by looking jealously upon any extension of the existing war right. It will come into conflict with air power. How can the rival claims be reconciled? Some compromise is obviously necessary. Each side must make some concession. It is submitted that a meeting ground may be found in the propositions set forth in this chapter. Briefly these are as follows :—

The propositions.—1. In future wars there will probably be considerably more bombing (long-distance bombing, at any rate) by night than by day. It cannot, therefore, be contended that in restricting certain kinds of (almost entirely long-distance) bombing to the hours of darkness, one is unduly fettering the freedom of action of belligerents.

2. Neither in day nor in night bombing will it be possible to guarantee absolutely that the effect is confined to a particular building and that no incidental damage is done to neighbouring property and civilian life.

3. At night, however, the conditions will probably be such that considerably more precision of fire should be attainable than by day and the limitation of the attack to a particular target more practicable.

4. Moreover, when the target consists of a group of buildings or a particular area, entirely given up to the kinds of property designated,¹ there should be no difficulty in confining the attack to such target.

¹ See p. 246, *supra*.

5. In that case, it should be possible wholly to eliminate loss of life ; in the cases referred to at (3) above, it should be possible to keep it within very circumscribed limits.

The compromise suggested.—Now, given these propositions, if air commanders were prepared, on their side, to confine their bombardments to the kind of property specified, and, so far as factories and establishments frequented by day are concerned, to the hours of darkness when such places may reasonably be expected to be unoccupied, or, if occupied, occupied only by a much smaller number of persons, who would have a greater chance of seeking safe shelter, would jurists be prepared, in return, to meet them to the extent of recognising a development of the existing law of devastation in two distinct directions ? Would they be prepared, that is to say, to admit the bombardment by aircraft of non-military property, not for the military end of depriving the enemy's fighting forces of potential supplies or accommodation, but for the political end of disturbing and deranging the routine of the enemy community and depressing its moral, and to allow such bombardment even if it involved some incidental, but probably not great, loss of innocent lives ?

Provided the bombardment is confined to the categories of property referred to and is carried out under the conditions which are likely to reduce the loss of life to the minimum, the writer submits that the answer to this question must be in the affirmative. But it must be added, to prevent any misconception of the writer's position, that his contention is not that there is, *at present*, a right to attack the non-military property in question, but, rather, that such a right should be recognised by international law, as a definite extension of the old war right of devastation, subject to the fulfilment of certain conditions : these conditions being that the attack must be restricted to defined categories of civilian property and—a still more vital condition—to the dead hours of the night. *Both* of these conditions are absolute conditions precedent to the recognition of the war right. It would be wholly illegitimate to claim that, because the right to attack civilian property is once given, such property can be attacked also by day, in virtue of a sort of amalgamation of the war rights of bombing military objectives and of bombing civilian property. The war right of bombing military objectives has nothing to do with the matter.

The proposals a limitation, not an enlargement, of war rights.—It must further be added, to prevent yet another

possible misconstruction of the proposals here made, that their effect should be to limit, not to enlarge, the war right of air attack. True, they allow civilian property (of certain kinds) to be bombed in addition to military objectives. But so long as military objectives are held to include railways, railway stations, and docks, as well as munition factories and the depots and establishments of the military services, no belligerent would have difficulty in bombing the heart out of any city in the world and yet keeping within the four corners of the rule. Let there be no mistake about it: the cities will be bombed, whatever rule is laid down. In no other way will belligerents be able to obtain the moral effect which they will certainly seek. They may endeavour—at first, at any rate—to attack military objectives only, but it is impossible, at the height at which raids by day are necessarily carried out, to confine the effect of the bombing to a particular building. Before long, even that pretence will be abandoned. Already in 1915 Grand Admiral von Tirpitz held that “a really effective concentrated bombardment of London by all available means from land and air would have been thoroughly justified as one way of shortening this inhuman war.”¹ Von Tirpitz would, no doubt, have bombed the New Jerusalem—to say nothing of London—light-heartedly; like the minor prophet, he was *capable de tout*. But there will be people very like him, in all countries, in all wars. What they say will matter in war far more than in peace. One must remember the atmosphere in which war is waged, so different from that of the jurist’s study or the council-chamber of peace. The demands of the champions of unrestricted air attack can be met, not by a blank negative, but only by a compromise which they can see to be reasonable. One must go a little way to meet them; better still, one should start from their own ground. Take, for instance, that very statement of von Tirpitz: modify it in two ways: re-cast it in terms of the bombardment—as concentrated as may be desired—of those quarters of a city which are densely populated only by day, and confine that bombardment to the hours of night. So, and only so, the writer submits, can one arrive at a practical and acceptable solution, and one likely to stand the acid test of actual war, of this terrible problem of air attack upon centres of population.

¹ Von Tirpitz, *My Memoirs*, Eng. trans., 1919, p. 306.

CHAPTER XI.

BOMBING : (IV.) HOSPITALS, HISTORIC MONUMENTS, AND OTHER PROTECTED BUILDINGS.

The sparing of hospitals, churches, etc.—Article 25 of the Air Warfare Rules drawn up at The Hague in 1923 reproduces with some slight modifications the provisions of the Land Warfare Regulations (Art. 27) and of the Naval Bombardment Convention (Art. 5), relative to the protection of "buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected." The commander of an attacking force, whether land or naval, is bound by the Conventions of 1907 to take all necessary steps to spare such buildings "as far as possible," provided they are not at the same time used for military purposes. The buildings must be marked by visible signs, the nature of which is not laid down for land war but, in naval war, is a large, stiff, rectangular panel, divided diagonally into two painted triangular portions, the upper part black, the lower part white. It will be seen that the Air Warfare Rules follow fairly closely the provisions of 1907, but add hospital ships (protected in naval warfare under the separate Convention of 1907 for the adaptation of the Geneva Convention to maritime war) and make the marking by black and white panels applicable generally as a protecting sign for buildings other than military hospitals. The provision in regard to the visibility of the signs at night is taken from the Convention for the adaptation of the Geneva Convention to maritime war.

The text of the Article is as follows :—

Art. 25.—In bombardment by aircraft all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals, and other places where the sick and wounded are collected, provided such buildings, objects, and places are not at the time used for military purpose. Such buildings, objects, and places must by day be indicated by marks visible to aircraft. The

use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be, in the case of buildings protected under the Geneva Convention, the red cross on a white ground, and in the case of other protected buildings, a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

The hospitals referred to in the article may be either military or civil, and it is to the former only that the red cross flag and marks are applicable. Civil hospitals must be distinguished by the black and white sign.

The visibility of the protecting signs.—The height at which the protecting marks must be visible is not stated. To be seen from the height from which bombs were dropped by day in the late war they will have to be enormous marks, and it is doubtful whether the buildings will, in some cases, have large enough roofs or be so situated as to allow sufficient space for the mark that will be necessary. Where aerial photography can be carried out before the actual bombing raid it may be possible to locate the protected buildings fairly accurately by ascertaining in this way their relative position. The camera can pick out marks that would be invisible to the sight. The French *aviation d'armée* employed on photographic reconnaissance in 1918 took its exposures at a height of 6000 or 6500 metres.¹ "I have seen an excellent photograph," says Lieut. Molter, "with minute details discernible to the naked eye, which was taken from a height of 17,000 feet—about three miles and a quarter."² Aerial photographs of the buildings at Morhange aerodrome, taken during the British raids of 3 and 4 September, 1918, apparently from a height of 12,500 feet (which was the height from which bombs were dropped), show the red cross plainly visible on the hospital.³ The elder Richthofen, whose sight was exceptionally good, records his opinion that at 15,000 feet it is very doubtful whether the keenest eyes can make out anything clearly on the ground,

¹ Jean Grégoire in *La Guerre aérienne*, 19 December, 1918, p. 938. He states that the photographic *aviation de corps d'armée*, on the other hand, which did not venture so far afield as the *aviation d'armée*, took its photos at a height of 1500 to 3000 metres.

² B. A. Molter, *Knights of the Air*, 1918, p. 180.

³ See the photographs in L. A. Pattinson, *History of 99 Squadron, Independent Force, R.A.F.*, pp. 42-5.

and hence, he says, the importance of a photographic outfit.¹ Whether a mark is, in fact, visible at the altitude at which hostile aircraft are likely to attack, could always be ascertained by sending up a machine to observe and report before the nature and dimensions of the mark are finally decided.

Attacks on hospitals in the great war.—Complaints of the bombing of hospitals were frequent in the late war. In the *Recueil des Actes de la Conférence de la Paix, Partie IV.*, B (2), *Commission des Responsabilités des Auteurs de la Guerre*, one instance of such a kind is quoted as having occurred in France and one in Serbia. The former was the case of the bombing of a hospital at Étaples on the night of 31 May—1 June, 1918, when 27 persons were killed and 79 wounded. The bombing was carried out from a height of 5000 feet and the red cross was stated to have been plainly visible—especially as a magnesium flare was first dropped—at that altitude. The case in Serbia occurred at Vertekop on 27 February, 1917. It would be wearisome to recount the many cases in which the belligerents charged one another with bombing hospitals from the air. Such charges were made especially by the Bulgarian Government (mostly in the winter of 1917-18²) against the French and British air forces and by the Italian Government against the Austrian and German air forces. Complaints by Great Britain, France, and Germany are also recorded. Possibly some of the attacks on hospitals were deliberate. An officer who was in the Ypres sector when the Casualty Clearing Stations there were bombed in September, 1917, states that the bombing was deliberate and was rumoured at the time to have been a retaliation for the shelling by our guns of a German hospital near Roulers Station.³ The anonymous "G.S.O.," who has given us a valuable account of the work of the British General Headquarters in France, has recorded his opinion that the German bombardment of the hospitals in France in June, 1918, was likewise deliberate.⁴ There is no doubt whatever that hospitals were hit, but whether they were intentionally hit is another matter. Probably most of the incidents in question were due to mistakes. A British pilot has confessed that he

¹ Richthofen, *Der rote Kampfflieger*, 1917, p. 181.

² Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 52-4.

³ Major W. H. L. Watson, *A Company of Tanks*, 1920, p. 137. Major Watson thinks that the rumour of the shelling of the German hospital at Roulers may have been an explanation "invented in very shame" of the German airmen's deliberate act.

⁴ "G.S.O.," *G.H.Q.*, 1920, p. 295.

mistook the large "red cross" laid out in an open space to protect one of our hospitals at Calais for an iron cross signifying that the Germans were in occupation of Ostend—over which he thought that he was flying.¹

The same pilot states in a later passage :—

"I do not think they [the Germans] intentionally bombed hospitals, as I have noticed that all the cases reported have been adjacent to some important location, as, for example, Étaples, where their objective was obviously the large reinforcement camp adjoining the hospital and the river bridge over which ran the main and, at that period, the only rail communication between Boulogne and Amiens. Although the majority of German soldiers are nothing more than brutes, they undoubtedly possess some sense, and it would be a waste of time, energy, and bombs to wound and kill men already wounded and dying, a form of reasoning that would thoroughly appeal to them."²

The difficulty of discerning the marks.—The Germans, naturally but probably truthfully, denied categorically the charge that their pilots aimed deliberately at hospitals. "Objectives other than military ones never came into the question. The numerous tales about the deliberate bombing of hospitals can only have sprung from the malicious gossip of faddists, either on our side or on the enemy's, and not from the experience of the night-flying airmen. It is impracticable even on bright moonlight nights to make out from an aircraft the red crosses on the hospitals."³

This last remark points to the fact that no special signs for night were installed at the hospitals which suffered, at all events in some cases. There were evidently no such night signs upon the French hospitals which were bombed on the night of 21 August, 1917, for the Havas Agency's report specially mentions the fact that the German airmen continued to drop bombs even after the conflagration made the red crosses painted upon the roofs plainly visible—an admission, in effect, that previously the marks could not have been very clearly seen.⁴ The fact that in January, 1918, two German airmen who were captured during a raid on Paris had in their possession a written order to spare hospitals and schools⁵ is evidence

¹ Capt. A. C. Reid, *Planes and Personalities*, 1920, p. 29.

² *Ibid.*, p. 83.

³ Major Keller, in Neumann, *Die deutschen Luftstreitkräfte im Weltkriege*, 1920, p. 434.

⁴ Quoted in *The Times*, 23 August, 1917.

⁵ See Thiéry, *Paris Bombardé*, 1921, p. 73; Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, ii. 343. The case is also mentioned in the *Daily Mail*, 2 February, 1918.

rather that the German authorities knew that they were accused of bombing such buildings than an admission that they had, in fact, bombed them.

Unsuitable location of the hospitals.—M. Mortane is inclined to be cynical upon the subject of the bombing of hospitals; he says that the mutual complaints were merely "l'éternelle histoire de la paille et la poutre."¹ Hospitals were bound to suffer under the practically indiscriminate air bombardment which was prevalent in 1914-18, and it is not necessary to impute any deliberate design to the bombing airmen to account for the undoubted facts. In some cases the hospitals were established in places where a military objective could not be bombed without the infliction of incidental damage upon them.² Mr. W. G. Shepherd, special correspondent of the United Press at Salonika, gave in a dispatch published in New York on 13 December, 1915, some facts which have a bearing upon this question; he states that he was informed by a British officer of the following incident:—

"One day we unwittingly placed one of our batteries too near a hospital. It happened through some mistake in orders. The Turks were the first to notice it, and they signalled to us with a heliograph: 'We'll be forced to fire very close to your hospital if you do not move your battery from that neighbourhood.' Of course, we saw that a mistake had been made, and we signalled back that we would move the battery, which we did."³

The German flying men serving with the Turks were equally chivalrous. The official historian of the Australian forces in Palestine and Sinai states: "Only a few days before Romani was fought [4 August, 1916], a German airman had dropped a message . . . asking the Australians to mark their ambulances more clearly, so that they should not be bombed. This chivalrous advice was acted upon, and subsequent bombers were careful to avoid them."⁴ Earlier in that year, in March, a

¹ J. Mortane, *Histoire illustrée*, ii. 52.

² Capt. John More (*With Allenby's Crusaders*, 1923, p. 18) says: "Certainly some of the hospitals (at Belah) were pitched in exceedingly stupid spots—near dumps and so on—that it was inevitable that they should receive a bomb intended for a legitimate target."

³ Quoted in *Daily Mail*, 14 December, 1915.

⁴ H. S. Gullett, *The Australian Imperial Force in Sinai and Palestine* (vol. vii. of *Australian War History*), 1923, p. 162. The German airmen did, however, bomb deliberately a British hospital in Palestine more than once, in May, 1917, but did so in reprisal for the shelling by the British of a mosque at Gaza and the bombing of a convoy of Turkish wounded: a note was dropped by the German aircraft explaining this. (As a matter of fact, the mosque that had been shelled

bomb had fallen on a hospital in Kut and killed six British soldiers and wounded twenty-eight others. The bomb, says Mr. Candler, was "no doubt aimed at Townshend's Headquarters, a favourite target of the enemy's heavies. The Turkish [really a German] airman who dropped it expressed the most profound regret and cannot be held guilty of the intention."¹

Other belligerents displayed less regard for hospitals and, indeed, the conditions of air attack often made it impossible to warn the enemy of the danger to which the situation of his hospitals or casualty stations exposed them.

Use of hospitals, etc., for warlike purposes.—The use of a protected building for military purposes—if known as a fact to the attacking airmen—deprives it of its immunity. The Austrians alleged in extenuation of some of their raids upon Venice that the Campanile was used as a gun-station for firing upon their aircraft. This was emphatically denied by the Patriarch of Venice.² Allegations of the use by the French of hospitals and other protected buildings for military purposes were made more than once by the Germans. The German official *communiqué* of 9 December, 1914, stated: "We had to destroy by fire a farm west of Rheims though it was flying the red cross flag. Photographs taken by our airmen show that the French were using the place as a shelter for their heavy artillery." Again, the German *communiqué* of 12 April, 1915, stated: "According to the declarations of French officers the cathedrals of Notre Dame de Paris and Troyes, the national library, the museums, the Maison des Invalides, the Louvre, and other buildings, have been supplied with military installations, such as searchlights, wireless apparatus, and machine-guns." On the other hand, it was reported unofficially from The Hague on 14 February, 1915, that machine-guns had been mounted by the Germans themselves on the cathedral tower at Cologne.³ If these allegations were true, the buildings in question were not entitled to protection.

was used to store ammunition, and the convoy that was bombed bore no distinctive marks), (Capt. O. Teichmann, *The Diary of a Yeomanry M.O.*, 1921, p. 147).

¹ E. Candler, *The Long Road to Baghdad*, i. 218. See also H. C. W. Bishop, *A Kut Prisoner*, 1920, p. 24, where it is stated that the bomb was probably intended for "the ordnance yard next door or some of the guns on the river bank only a little further on."

² Mérignhac et Lémonon, *Le Droit des Gens et la Guerre de 1914-18*, 1921, i. 638.

³ See *The Aeroplane*, 17 February, 1915. Sven Hedin (*With the German Armies in the West*, Eng. trans., 1915, p. 166) states that if an enemy airman tries to fly at night over a fortified town, searchlights are turned on him, "whilst from

No matter how historic, how artistically precious a town may be, it cannot claim immunity if it is used in fact for a warlike purpose. Much was heard of the German and Austrian air raids upon Padua in the late war. "Night after night we were bombed in Padova by German night-flying squadrons," writes a British *liaison* officer in his diary at the end of December, 1917. "On some occasions they came in relays from ten o'clock till four in the morning, hovering over the city under desultory artillery fire. They dropped about seventy bombs a night on this beautiful Italian city, which is about the size of Oxford. . . . Of course, there was really no reason why the enemy should not have bombed the town, as at this moment it sheltered the Italian Comando Supremo as well as the British and French Headquarters."¹ Provided the bombing airmen took reasonable precautions to confine their attack to military objectives, their action cannot be condemned on the ground that it incidentally caused damage to artistic treasures.

Artistic and historic monuments.—The origin of Article 26 of the Air Warfare Rules, which makes further provision, supplementing that in Article 25, for the protection of historic monuments, may be traced to a resolution passed by the Società Leonardo da Vinci in January, 1915, recommending that the belligerents (not then including Italy) should take special steps to respect artistic and historic monuments in their military operations. The Society reaffirmed the resolution in July, 1916, after a bombardment of Venice.² The resolution fell on deaf ears, so far as Austria was concerned. The north Italian cities, with their wealth of artistic treasures, suffered so severely from Austro-German air raids that an Italian *communiqué* could state without exaggeration that the enemy were immortalising their name by writing on the monuments of Italy: *Roma fecit, Germania delevit*. Some day, said this *communiqué* (of 21 February, 1918), Baedeker will add to its descriptions: "This monument was constructed by the genius of Italy and destroyed by the blood-thirsty madness of Austro-Germany."³

the nearest church tower he is pelted by fire from machine-guns, which pour a rain of bullets on him."

¹ C. H. Goldsmid, *Diary of a Liaison Officer in Italy, 1918, 1920*, p. 40.

² See letter of Mr. Richard Bagot in *The Times*, 14 October, 1916.

³ *Diario della Guerra d'Italia*, iii. 1924. An attempt was made by Austria to justify the attacks on the ground that it was legitimate to destroy a source of the enemy's wealth—the art treasures which induced foreigners to visit the Italian cities; see *The Times*, 20 September, 1916.

The rules proposed by the Commission of Jurists.—The provision in Article 26, which was brought forward by the Italian delegation at The Hague, improves upon that contained in Article 25 by establishing, first a zone of immunity around the monuments, secondly, a system of neutral inspection and guarantee of the non-military use of that zone. It entitles a State, if it sees fit, to create a zone, not exceeding 500 metres in width, around any monument or group of monuments ; to notify the zone to other Powers ; to display upon its circumference special marks visible to aircraft ; and, provided the zone is kept free from military use of any kind, to claim immunity for it from air attack. To ensure that the zone is not used for military purposes, an inspection committee of three neutral representatives accredited to the State which has established the zone and including the representative of the State to which the opposing belligerent's interests have been entrusted, is appointed upon the outbreak of war.

The text of the Article is as follows :—

Art. 26.—The following special rules are adopted for the purpose of enabling States to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and their surrounding zone for military purposes, and to accept a special régime for their inspection.

1. A State shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.
2. The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel ; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.
3. The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.
4. Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.
5. The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each State adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.

6. Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.
7. A State adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organisation, or from committing within such monument or zone any act with a military purpose in view.
8. An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the State to which has been entrusted the interests of the opposing belligerent.

The establishment of the zones not obligatory.—The creation of the zones is purely permissive. The State concerned is not bound to establish them. It is free to weigh, one against the other, the advantage of securing protection for its historic monuments and the advantage of being able to use the localities in question for warlike purposes, e.g. for using a railway line skirting the monument for the conveyance of troops and munitions. Having made its choice, it must abide by that choice. The zones must be delimited and notified in peace, and the notified States have the right to question the propriety of regarding a particular place as coming properly within the terms of the provision. Once notified and accepted without protest, the zone cannot be "de-immunised" in time of war. The belligerent who has created it has no right to withdraw his notification after the outbreak of war or to claim that, by refraining from displaying the specified marks, he is entitled to use it for military purposes in any altered conditions brought about by the incidents of the war.

It should be added that whether a building or monument of the kind referred to in Articles 25 and 26 is specially marked or not (or specially lighted at night or not), it is not subject to attack by enemy airmen unless it is known as a fact to be used for some military purpose. This follows necessarily from the rule that only military objectives are liable to bombardment. The effect of the absence of marks, or of lights at night, is merely to reduce the responsibility of the enemy airmen if, in attacking the military objectives in the vicinity, they damage the monument or building.

The special marks for the boundaries of the zone will differ

from those upon the monuments themselves. The nature of the latter is specified in Article 25 ; marks of a different kind were considered to be necessary for the limits of the zones.

In cities such as Florence or Venice it may happen that the number of monuments to be protected is so great that practically the whole area of the town is an immune zone. Provided the conditions of immunity are strictly fulfilled, the Commission agreed that no objection would arise to the creation of such extended zones as would thus result.

The connotation of "historic."—As originally proposed, the draft of Article 26 referred to "artistic" as well as "historic" monuments, but, since the existing rules upon the subject¹ spoke only of the latter, it was decided to adhere to the same nomenclature. The Commission agreed, however, that "historic monuments" would cover not only buildings with a historic past but also those whose beauty or interest was such as to ensure for them a historic future. No standard of artistic excellence or of other qualifications entitling a building to benefit under the Article is laid down. Each State is free to use its own judgment in this matter, and the terms of the Article would apply alike to the treasures bequeathed to us by ancient Greece or Italy and to the memorials designed in honour of Prince Albert and Queen Victoria by Sir Gilbert Scott and Sir Thomas Brock respectively. On the other hand, the provision covers only historic monuments or buildings, not the contents of a building which cannot itself be considered in any way historic or artistic. Hence literary treasures—a codex of the Gospels, for instance, or a Book of Kells—would not be protected under its terms if kept in some common-place, modern library ; nor would artistic treasures—a glory of Velasquez, for instance, or Rembrandt—if similarly housed.

Criticism of the provision.—When, early in the war, the Kaiser agreed to the bombing of London by the German naval airships, he did so only on condition that "the monuments, and especially St. Paul's Cathedral," should be spared.² He gave never a thought, apparently, to the great city hospitals—St. Bartholomew's, Guy's, the London. Is there not something of the same want of perspective, of failure to perceive that living humanity is more precious than any inanimate relic

¹ Art. 27, Hague Land Warfare Regulations ; Art. 5, Naval Bombardment Convention.

² *Der Krieg in der Nordsee* (German Official Naval History, Part IV.), 1924, p. 263.

of antiquity, in this Italian proposal? Whether, in any case, the rules laid down will work very satisfactorily remains to be seen. There is some obvious danger of abuse of the immunity granted, notwithstanding the provision for neutral inspection. Difficulties may also arise in connection with the establishment and notification in peace time of the protected zones. It may happen, for instance, that some particular State desires, for special reasons, to take the fullest possible advantage of the provisions of the Article and to establish protected areas on a scale which the States notified of this intention cannot regard as compatible with their military interests. Differences in regard to the scope and interpretation of the rules may also arise. Would Article 26, for instance, warrant Great Britain in declaring the Houses of Parliament a protected zone? As they are not used for military purposes, apparently it would; yet, since the legislature has its seat there, an enemy might not unreasonably contend that these buildings, though undoubtedly historic, are not within the intended scope of the provision. It is true, no doubt, that the resulting disagreement between the notifying and the notified States would be a trivial matter, but it is, nevertheless, the formation of such tiny clouds that in time makes the international sky overcast and threatening. It would, indeed, be regrettable if among the contributory causes of that state of mutual suspicion and distrust in which war is most likely to arise were to be found the very measures designed to prevent one of its incidental evils.

Once it has been agreed to adopt the doctrine of the military objective and to discard the old rule that any part of a defended city could legitimately be bombarded, the necessity for such provisions as those in Articles 25 and 26 is diminished. When the old rule of bombardment existed it was clearly desirable that attacking commanders should endeavour to distinguish between hospitals (and similar institutions) and the general mass of property in the bombarded town and to spare the former as far as possible. Under the new *régime* of bombardment, hospitals, historic monuments, etc., may not, in any case, be attacked (unless they are used for military purposes), and the only effect of such a provision as that in Article 25 is to impose upon the bombarding force the obligation to exercise a higher degree of carefulness where such institutions are concerned. It may be useful to emphasise this obligation, but whether it is necessary to refine upon it to the extent attempted in Article 26

and to establish a special system of protection for one particular class of protected buildings, namely, historic monuments, seems to be open to question. To do so amounts to an admission that the ordinary rule that non-military objectives may not be bombarded, supplemented by the further rule that where such non-military objectives are hospitals, historic monuments, *et hoc genus*, special care must be taken to spare them, is so unlikely to be adhered to in practice that it is necessary, when one comes to a class of property which one wants really to protect, to super-add an elaborate system of demarcation of zones, notification, special markings, and neutral inspection, which are unnecessary in the other cases.

CHAPTER XII.

SPECIAL MISSIONS OF THE AIR.

The nature of the problem.—The problem of the war rights of the *personnel* employed upon special missions is a new one which aviation has presented to international lawyers. It is one of considerable difficulty. The old law of war had provided for cases which were comparatively simple and straightforward. There was first the case of the military scout—the officer or soldier in uniform—whose employment upon a service of intelligence prejudiced in no wise his combatant status. There was, next, that of the spy—the civilian, or the officer or man in disguise—who tried to collect military information in a zone of operations and was not entitled to combatant rights on capture. A third case was that of the individual whose “espionage” was conducted in belligerent jurisdiction but not in an operational zone; such a person was guilty of treason or of war-treason, according to the circumstances. Lastly, there was the case of the civilian who carried out acts of sabotage or destruction within a belligerent’s jurisdiction in the military interests of the enemy and who, again, was chargeable with treason or war-treason as the case might be. All these cases were provided for in the heretofore existing law and custom of war.

New complexities have now been introduced. They result from the use of aircraft for the conveyance of an agent detailed for some duty of intelligence or demolition behind an enemy’s lines. It is, of course, only in the event of the capture of the personnel concerned that any question of their war rights arises, and so far as that question is one special to air warfare, it arises only when some association between the agent and an enemy aircraft is alleged. It is, therefore, necessary and sufficient to consider the position when the aircraft, with the agent on board, is brought down in flight, when it is captured in landing, or immediately after landing, the agent, and when it is captured in taking him up again after he has accomplished

his mission. Before the question of the treatment of the agent and of the pilot in these circumstances is considered, it is desirable first to obtain a clear idea of the nature of special missions and of the practical conditions with which one has to deal.

Special missions of the air in 1914-18.—"Mission spéciale!" writes Marcel Nadaud, "ces deux mots évoquent plusieurs pages héroïques du livre d'or de la cinquième arme."¹ Full-charged with romance and heroism, the "special mission" was one of the secrets of the war, closely guarded, never intentionally disclosed, yet practised on a great scale by both sides from almost the beginning of the struggle.² Now and then some reference to special missions would creep into the press, owing to an oversight of the censors, but even these references were few.³ In official announcements there appeared from time to time statements that the enemy were engaged in landing spies or secret agents, but it was never hinted that the belligerent issuing the *communiqué* was doing exactly the same. A proclamation by the Director of the Circle of Colmar announced in September, 1915, that French aviators were landing spies whom they subsequently picked up again at an agreed time.⁴ An order of the 7th German Army Corps, issued in October, 1915, directed that all landings of aeroplanes should be reported, that any passengers should be detained, or, if they had left the aeroplane, that the neighbourhood should be searched to discover them.⁵ In the same month it was announced in Germany through Wolff's Bureau that Allied aviators had been landing soldiers in civilian clothing for the purpose of destroying the German railways, etc.⁶ A German official *communiqué*

¹ Nadaud, *En Plein Vol.*, 1919, p. 165.

² See Sir F. H. Sykes, *Aviation in Peace and War*, p. 66; see also C. C. Turner, *The Struggle in the Air, 1914-18*, p. 232.

³ Thus in the *Observer* of 13 December, 1914, it was stated that a French pilot had landed a scout in German territory and brought him back again, and in the *Daily Telegraph* of 9 July, 1915, Mr. A. Beaumont reported from Italy that an Italian aviator had landed an observation officer behind the enemy's lines and had returned to pick him up a few days later (see *Flight*, 16 July, 1915). In the *Daily Express* of 30 August, 1918, Mr. H. J. Greenwall gave some particulars of the exploits of Védrières in landing spies. M. Mortane had already been allowed, in *La Guerre aérienne*, 25 April, 1918, to refer publicly to a secret mission in which Guynemer had taken part. Mr. E. Alexander Powell, in his book, *Vive La France*, published in London in 1916, gives some details of the dropping of spies by French and British aviators behind the German lines (pp. 211-12).

⁴ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (42).

⁵ See *The Aeroplane*, 13 October, 1915, quoting the order as reported by its Danish correspondent.

⁶ *Ibid.*, 10 November, 1915.

of 9 August, 1916, included in an enumeration of the Allies' aircraft losses the item: "Lost in attempts to land spies, 1." In France, an official notice was issued in July, 1918, by the Direction des Étapes, inviting the civil population to warn the nearest military or civil authority of any aeroplane seen to land outside a military aerodrome, and to arrest any passenger landing therefrom.¹ Official references in Great Britain to the work of the secret agents are to be found only in the carefully guarded wording of some of the awards of decorations. Usually the notes to the awards set forth the services for which they were given; it sometimes puzzled those who were unaware of the work which was being done in this direction to read that a decoration had been awarded for some "special service," or "mission of an exceptionally dangerous kind," the nature of which was not disclosed.² The pilots who took part in the missions worked far from the lime-light. Some, no doubt, felt as did Védrines,³ that their service was a thankless one, or, perhaps, even worse. The fact that a famous airman like Védrines was never mentioned in the *communiqués* gave rise, one knows, to slanderous questionings of his courage; nay, more, when some hint of the magnificent work which he was really doing was given, it grew into a rumour that he was a German spy!

Védrines, says M. Mortane, was "the illustrious Ace of the special mission."⁴ Other famous French pilots were employed occasionally upon the duty. Guynemer carried out two special missions⁵; Navarre carried out three. Of the three agents whom Navarre landed, two were captured and shot by the Germans, while the third made his way back through Holland.⁶

¹ Mortane, *Special Missions of the Air*, Eng. trans., 1919, p. 9; Lacroix, *Le Domaine aérien et la Guerre*, p. 223.

² Sometimes, however, a veiled reference was made to the intelligence work performed. For instance, in the notification of the award of the D.S.O. to 2nd Lieut. C. A. Ridley, M.C., it is stated that it was given "for judgment in the execution of a special mission. When his machine was wrecked he showed great resource and obtained valuable information" (*London Gazette*, 14 November, 1916).

³ See an article by Jules Védrines, "Ses Débuts," on Guynemer (his former pupil), in *La Guerre aérienne*, 18 October, 1917, p. 774. Védrines says that it seems unseemly for him, who was unknown in the war, to speak of the most famous of French airmen, Guynemer; but, he adds, he (Védrines) had been employed on missions which could not yet be disclosed.

⁴ Mortane, *Special Missions of the Air*, Eng. trans., 1919, p. 20.

⁵ *Ibid.*, pp. 20-2; Bordeaux, *Guynemer, Knight of the Air*, Eng. trans., p. 87.

⁶ Mortane, *op. cit.*, pp. 21-2; Navarre, "Mes Aventures guerrières et autres," in *La Vie aérienne*, 14 August, 1919, p. 525. One French officer who had been

M. Mortane on special missions.—The work of the pilots and the agents concerned is well described by M. Mortane in his book upon special missions. "This 'job of work' consisted of taking by aeroplane into enemy territory a passenger who would harvest information there, or, failing that, would employ dynamite to abolish important structures. . . . The risk was great: a pilot captured at the moment of setting down his spy was liable to the death penalty—his companion was *sure* of being shot. One can imagine the courage required by these men setting out to alight in an unknown country as best they might, well knowing that the least failure of the machine would make return impossible. . . . The passengers were generally civilians, natives of the district which was being studied, customs officers, or occasionally soldiers, who, with unusual knowledge of the country, or being avid of adventure, wished to tempt chance."

"There were two ways," he goes on, "of setting about a special mission: to drop your spy and come back without bothering any more about him, or to go and look for him a few days later; the second method being rarely resorted to. The passengers took with them carrier-pigeons, by means of which they were able to transmit the information picked up from day to day. Then, when their task was finished, they would generally work back by way of Holland." ¹

The pilot whose duty it was to land a special agent was sometimes notified by some code of signals sent or displayed by an accomplice on the ground whether it was safe to make the landing or not. A British flying officer describes one case in which the signals were given by an old peasant woman of, apparently, the most harmless character, in the form of washing spread in a field or linen hung on a line to dry. The woman was really a German, "whose linguistic powers must have been second only to her ability at the wash-tub." ²

How the missions were dispatched.—Sometimes a quite considerable equipment was landed with the agent. In October, 1918, for instance, a French machine dropped two agents with "food (bully beef, biscuits, coffee), wireless mast, telephonic

landed in Flanders made his way across Belgium to the Dutch frontier, only to be captured and shot as a spy at the last; the Germans expressed unbounded admiration for his coolness and daring (E. A. Powell, *Vive la France*, 1916, p. 212).

¹ Mortane, *op. cit.*, pp. 10-11.

² "Flight Commander," *Cavalry of the Air*, 1918, pp. 180-92.

receivers, carrier-pigeons, and—most important of all—dynamite, with the necessary aids for its use.”¹ Carrier-pigeons were usually included in the *impedimenta*. Lieut. B. A. Molter describes the dispatch of a mission which he himself witnessed. Adjutant Batcheler of his *escadrille* was detailed to drop a special agent behind the German lines. He set out in the small hours of the morning, carrying the agent, who was dressed as a Walloon peasant, with wooden shoes, etc., and appeared to be a hunchback. The “hunch” was, in reality, a wicker basket containing carrier-pigeons, and the seeming Walloon peasant was, in truth, one of the most active and dangerous intelligence agents in the French service. Batcheler landed him successfully in a field twenty kilometres behind the German front, while two escorting French aeroplanes kept watch overhead. The three then dashed for home. “Of course,” adds Lieut. Molter, “there is a reverse end to the traffic. Aeroplanes go out into the night with only a pilot and return with a passenger . . . The Germans are doing the same thing and know that we are doing it.”²

An Italian officer who, with a picked soldier, took part in a secret mission of this kind has described his precautions to escape treatment as a spy if captured while alighting. “At first I had decided to leave the camp disguised as a peasant, but Bottechia [the soldier] rightly remarked that it would be better to remain in uniform and carry our disguise under our arms, so that in case the Austrians were to surprise us while alighting, we would not have to explain to them our plan, but could say we were aviators who, after a nocturnal flight to ascertain the conditions at the railroad station at Casarsa, had been compelled to land because of a fault in the motor. The enemy would not have time to notice our civilian clothes on the plane, for at the first alarm we would have made them disappear by means of a special infernal machine with which our planes are equipped in case they have to land in enemy territory.” He describes subsequently how he and the soldier landed in enemy territory carrying their civilian disguise in bundles and changed into the latter at some distance from the place where they alighted.³

Capt. Wedgwood Benn's experience.—Capt. Wedgwood Benn has described in detail the preparations made for, and the

¹ Mortane, *op. cit.*, p. 48.

² B. A. Molter, *Knights of the Air*, pp. 148-54.

³ Lieut. Camillo de Carlo, *The Flying Spy*, Eng. trans., 1919, pp. 97-8, 183.

execution of, a plan for landing an Italian agent behind the Austrian lines in 1918. The agent was an Italian soldier named Tandura, and the plan was to drop him by parachute in some remote district from which he would make his way to his native town near Vittorio, collecting all the military information obtainable and transmitting it by signals or carrier-pigeons, which he was to take with him, to the Italian forces. The pilot was Lieut.-Col. W. G. Barker, V.C., and Capt. Benn accompanied the mission in the capacity of navigator and organiser. The aeroplane, an old and shaky S.P. 4, was fitted with a trap-door below the place where Tandura sat, and this could be released by means of a wire controlled by Capt. Benn. Three bombs were carried in the machine—"as camouflage of the real object of the flight"—and after the agent had been landed two were dropped on the homeward journey, in order, says Capt. Benn, to "convince the Austrians that our raid is a feeble bombing effort." "If we had come down," he adds, "there was a third bomb in the machine to prove we were acting within the accepted rules of war."

Tandura wore uniform but carried an outfit of peasant's clothes in a knapsack. He was landed safely, by parachute, and changed on the ground into the peasant's clothes. From August to October, 1918, he lived behind the Austrian lines, befriended by the peasants and his former acquaintances, and succeeded in transmitting important news to the Italian Command. His services were, indeed, so valuable that he gained the title of "Author of the Battle of Vittorio," and was awarded the Gold Medal for Valour, the highest award for bravery in the Italian army. "He was by far the bravest man I have ever known," says Capt. Benn, of this under-sized, hard-bitten mountaineer. He was seized on one occasion by Austrian soldiers and haled to their headquarters, where he managed to pass as an escaped prisoner and was put on the ordinary tasks of carrying ammunition and of general labour. He succeeded in escaping from his captors after a while and resumed his intelligence work, and was finally rescued when the victorious Italians reached Serravalle at the end of October.¹

The anonymity of the service.—Sometimes the name of the secret service agent was entirely unknown to the pilots who carried him on, perhaps, many a special mission. A French pilot tells of one who was known only as "S.S.R. 58," this being an abridgment of "*le sieur Service de renseignements 58,*"

¹ Wedgwood Benn, *In the Side Shows*, 1919, pp. 278-310.

the appellation by which he was described in the official reports. The particular agent referred to was a well-born and highly educated Frenchman who assumed the disguise of a peasant for the purpose of his mission. To the pilots he was a man of mystery. All that they knew was that he came to their aerodrome, was carried over the German lines and landed, was called for again at a place signalled, at night, by a little light visible only from straight overhead, was carried back, and went away to report. What he did beyond the lines was as unknown as his name.¹

The humorous side.—The work was not without elements of comedy. The agent was sometimes dropped by parachute and, according to Group-Capt. A. J. L. Scott, it became necessary at the end to provide for a possible failure of nerve on the part of the passenger by making him sit, in his parachute, over a trapdoor in the fuselage operated by a lever which the pilot could pull. "They were very brave men," he adds, "these French spies who voluntarily entered the occupied territory in this hazardous manner. They were usually dropped either in the late evening or early morning."² "Occasionally they were dropped from aeroplanes," say Mr. Dewar and Col. Boraston, "and at least one story was current of an unfortunate agent, whose nerve failed him at the last moment, being ruthlessly forced to let go his hold by being beaten over the fingers with the butt of a pistol by an unsympathetic pilot. Not infrequently the succession of messages received from some particular agent would be abruptly interrupted, and we would be left to conjecture the fate of the sender."³

How the agent transmitted his messages.—The agent usually communicated with his principals by means of carrier-pigeons, but sometimes by wireless or by linen "panels" displayed at pre-arranged places where they could be seen from aircraft.⁴

The return journey.—Landing a spy was easier than picking him up again. "It is comparatively easy to take a man over and leave him far in the rear of the German trenches, but going back for him is another matter."⁵ Fonck tells us of the

¹ André C.H.A., *Au-dessus des Batailles (Carnet de Guerre d'un Aviateur)*, 1917, pp. 201-3.

² A. J. L. Scott, *History of Sixty Squadron, R.A.F.*, p. 10.

³ Dewar and Boraston, *Sir Douglas Haig's Command*, 1922, ii. 70.

⁴ *Ibid.*; C. de Carlo, *The Flying Spy*, p. 323. De Carlo set out his signalling panels on a river's bank where women were in the habit of laying out their washing.

⁵ C. D. Winslow, *With the French Flying Corps*, p. 149.

experiences of a comrade of his who was charged with the duty of bringing back from a secret *rendezvous* in the enemy's territory a French agent who had in his possession important documents. For a full half-hour he awaited on the ground the agent's coming, with the moonlight displaying to his strained attention figures of possible enemies in the surrounding trees. At length the man appeared but as he did so, German soldiers followed, and the machine had already been pierced by their fire and the agent wounded when it rose into the air and escaped.¹ On 6 April, 1917, the *maréchal des logis* Clerisse, while engaged on a "special mission," damaged his propeller in landing in enemy territory. His "spy" handed him a pigeon and this he liberated with a message asking for the dispatch to him by air of another propeller! For three days he awaited the expected arrival of a fellow-pilot with the required spare part, but the weather was unfavourable, and no relieving airman appeared. Clerisse and his spy were captured. He was not shot, we are informed, but it is not stated whether this was because he succeeded in escaping (as he soon did) before trial, or because he was acquitted. The fate of the "spy" is not disclosed.²

Missions with the object of destruction.—Equally daring and dangerous were the exploits of the agents who were landed to carry out acts of destruction behind the enemy's lines and of the pilots who carried them.

Capt. Paul Bewsher tells how, early in the war, a British B.E. 2 C. machine, with pilot and observer, carried out a daring special mission, the object of which was the destruction of a certain bridge behind the German lines. The observer, with a package of explosives, was landed some way from the bridge, and waded—for the final portion of the way waist-high—along the river to the stone piers, in one of which he inserted the explosives and set the fuse. Meanwhile, to distract the enemy's attention, the pilot machine-gunned from the air the sentries at the bridge and also dropped bombs (small ones they would be at that date) upon it. Then he landed at the same spot as before, to which the observer had made his way, and while the machine with its two occupants was again rising from the ground, they saw and heard the explosion which told that their mission had been accomplished.³

¹ Fonck, *Mes Combats*, 1920, pp. 198-200.

² Mortane, *Histoire illustrée de la Guerre aérienne*, i. 240.

³ P. Bewsher, *Green Balls*, 1919, p. 236.

More than one special mission for the purpose of demolition occurred in Iraq in the war. On 13 November, 1915, before the battle of Ctesiphon, Capt. T. W. White, Australian Flying Corps, with Capt. F. C. C. Yeats-Brown, Indian Army, flew a distance of sixty miles in an aeroplane to a point beyond Baghdad, in order to destroy the telegraph wires to Constantinople. In landing, White smashed a wing of the machine, which was rendered useless, but Yeats-Brown is stated to have succeeded in blowing up the wires, although the officers were then under fire from a party of Arabs and Turks who had come up. The two officers were captured.¹ According to another account the object was to destroy the railway line. An officer who was serving with Gen. Townshend's force states: "One fine morning—the 10th or 11th [Nov., 1915]—we were informed that an aeroplane had been dispatched to cut the telegraph wire beyond Baghdad!" Seeing, however, that it had started laden with gun-cotton and dynamite, that it was an "old bus" which could scarcely carry enough petrol for the journey but, being slow, could land almost anywhere, and that its chances of making the return journey were very thin, "some put two and two together and guessed that this was by way of a 'forlorn hope' to destroy, not the telegraph wire, but the railway line beyond Baghdad. . . . The aeroplane failed to accomplish its mission and was eventually forced to descend in the desert, where it was destroyed: pilot and observer were made prisoners by the Arabs."² Gen. Townshend himself speaks of the mission as having been attempted by Major Reilly, R.F.C.,³ but it appears from the account in the Australian official history that this officer was captured when engaged in a separate reconnaissance.⁴

Another daring attempt of the same kind was made during Gen. Maude's victorious march on Baghdad. Two engineer officers, carrying charges of dynamite, were conveyed in aeroplanes piloted by Lieuts. Windsor and Morris, to a point on the railway between Baghdad and Samarra, for the purpose of blowing up a culvert. They were prevented by the approach of Arab horsemen from accomplishing their mission.⁵

According to German official reports issued in October,

¹ F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War*), 1923, pp. 21-2.

² Capt. H. Birch Reynardson, *Mesopotamia, 1914-15*, 1919, p. 247.

³ Sir C. V. F. Townshend, *My Campaign in Mesopotamia*, 1920, p. 170.

⁴ Cutlack, *loc. cit.*

⁵ Lieut.-Col. J. E. Tennant, *In the Clouds above Baghdad*, p. 96.

1916, better success attended two separate raids of a similar kind carried out by German aircraft. The *communiqué* of 4 October, 1916, announced that: "Lieut. von Cossel was set down from an aeroplane by N.C.O. Windisch south-west of Rowno and was fetched again twenty-four hours later. He blew up the railway line between Rowno and Brody at several points." The *communiqués* issued by the German Army authorities on 23 October, 1916, and by Bulgarian headquarters on 24 October, 1916, stated that a naval aeroplane landed behind the retreating enemy forces in the Balkans and destroyed two aeroplanes on the ground, afterwards returning in safety.

The exploit of Felmy and Falke.—In April and May, 1917, two German airmen serving with the Turkish forces in Palestine made daring attempts to destroy the water conduits upon which the British forces depended in their desert march. According to the Turkish *communiqués* of 26 April and 25 May, 1917, they landed far in the rear of the British lines and succeeded in cutting the pipe line and, in the second raid, telegraph lines as well. The officers concerned were Hauptmann Felmy and Oberleutnant Falke, and the former has recorded the story of the exploit. He states that he (then an Oberleutnant) and Oberleutnant Falke blew up the water conduit at a point 150 kilometres behind the English front and carried home as "booty" a large piece of the iron pipe. As a result, he says, the English could obtain no water after the second engagement at Gaza. Four weeks later they attempted a more ambitious plan, including the railway and telegraph lines in their programme. From the account which Felmy gives the mission appears to have been less successful than the first. He and Falke were surprised by two cavalry patrols while placing their explosives in position. They barely escaped in their aeroplane before the British soldiers came up.¹ According to the account given by Mr. W. T. Massey, the war correspondent, at the time,² the second raid was entirely unsuccessful. "This morning," he states, writing from "before Gaza" under date

¹ Felmy, in Neumann, *Die deutschen Luftstreitkräfte im Weltkriege*, 1920, p. 525. Capt. O. Teichman (*The Diary of a Yeomanry M.O.*, 1921, p. 141) refers to the first raid, under date of 23 April, 1917, as follows: "We heard that two enemy aeroplanes had alighted two days ago close to the railway on the Sabkhet at Salmana in the Sinai Peninsula, some sixty miles in our rear, and while one of the Germans got a machine-gun into action, the other proceeded to blow up the railway line and the pipe line. . . . The damage which had been done was, however, quickly repaired, and the amount of water which had been lost was not sufficient to seriously hamper the front-line supply."

² See *The Times*, 1 June, 1917.

of 24 May, "an aeroplane with three men and explosives came down at Salmana, a few miles from Bir-el-Abd, to attempt to cut our railway and pipe line. The men alighted and were about to place dynamite in position when our patrol opened a heavy fire. The enemy airmen ran, leaving the machine and all their explosives and implements. Blood trails showed that one man was hit, but not the slightest damage was done to us." The Australian official history also states that the raid of 25 May, 1917, was unsuccessful.¹

The expedition of Lieut. Emrich.—In the cases quoted above it is to be presumed that the officers who were landed to carry out the work of destruction were in uniform. In the following case, recorded by Sous-lieut. Emrich of the French aviation, it appears that a longer sojourn in enemy territory was contemplated and that the passengers landed were dressed as civilians. He set out in an aeroplane on the night of 20 October, 1918, with two passengers, a commandant and a German deserter, a native of Lorraine who had been forced into the German ranks but had surrendered at the first opportunity, and his mission was to drop the two passengers, with dynamite and fuses and provisions, near the tunnel of Laifour, in territory held by the Germans. Upon landing, the aeroplane was attacked by a German patrol and its radiator was pierced by bullets. Emrich decided to burn the machine and to escape on foot with his companions. They succeeded in escaping from the patrol with their food and explosives, and in reaching the tunnel, which they found to be of small importance as a channel of revictualment, the railway there being little used. The main supply traffic went by river, apparently a canal near the Meuse, and they decided to use their explosives to destroy a lock-gate. In this they were completely successful. Subsequently, with great difficulty and after many dangers and privations, they made their way back to the French lines. They had been nineteen days in the German lines.² It is not clear from the account whether they were all in uniform; as the original intention had been that Emrich should simply land his passengers, who were to remain in the German lines with a good supply of provisions and carrier-pigeons, as well as the explosives, the two passengers were probably in civilian clothes,

¹ F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 65. A third unsuccessful raid was attempted on 5 August, 1917 (*ibid.*, p. 75).

² Lieut. Emrich, "Ma Mission spéciale," in *La Guerre aérienne*, 19 December, 1918, pp. 939-40.

and they would in that case have been liable to be treated as "war criminals" if they had been captured. If, however, they were in uniform, they would have been entitled to be treated as prisoners of war.

The war rights of the agent.—What are the war rights of the actors in the drama of the special mission of the air? Take first the agent himself. Since the question arises only in the event of capture, it may be assumed that conveyance of him over, or landing or recovery of him in, territory or waters under enemy control, is alone concerned. If there is clear and unambiguous evidence of his employment, intended or completed, upon a service of intelligence or of destruction, and, furthermore, of his employment upon that service under conditions which would amount to espionage, treason, or war treason if he were captured in the act on the ground, it appears that he could properly be brought to trial if captured in an aircraft, or when being landed from or taken again up in an aircraft. Suppose, for instance, that he were a civilian, or an officer or soldier in disguise, dressed as an inhabitant of the enemy country, and carrying or accompanied by a basket of carrier-pigeons or a supply of dynamite or some other materials for espionage or destruction. The nature of his service would, in such case, be abundantly clear and his liability to be brought to trial beyond question. If he were in uniform but accompanied by clear evidence of his intended mission in the shape of a full civilian outfit, carrier-pigeons, etc., his position would be more doubtful, and would depend upon the exact circumstances of the case. It is probable that if, in such a case, he were shown to be a civilian who had donned uniform (to be discarded again on landing) merely for the special flight in the aircraft, he would be regarded as a spy or war criminal. But often the evidence will be far from conclusive. The fact, by itself, that a civilian is being conveyed in the aircraft, even over enemy ground, will not be sufficient to incriminate him. He may be a guide, who knows the country (though not a native), and there is no crime in employing civilian guides. Nor will the presence of a change of clothing in the aircraft be conclusive evidence of guilt. The change of clothing may be there for a perfectly innocent purpose.¹ That a flying

¹ R.F.C. officers sometimes conveyed suit-cases, valises, pyjamas, etc., in their aeroplanes when changing aerodromes or going on temporary duty. See W. Noble, *With a Bristol Fighter Squadron*, p. 72; "Theta," *War Flying*, 1919, p. 97. Fonck had a fight in the air on one occasion when he was changing camp and was carrying two valises in his machine—and shot down two opponents: *Mes Combats*, 1920,

officer may himself be dressed, on occasions, in a way which is distinctly irregular, is evident from the examples given in another chapter.¹ It is, therefore, essential, if a grave miscarriage of justice is to be avoided, that all the circumstances should be taken into account whenever an apparent spy is captured in an aircraft and that full consideration should be given to the various possible explanations of facts which are *prima facie* suspicious.

The war rights of the pilot.—The position of the pilot is still more doubtful. Is he or is he not "tainted" with the character of the spy whom he carries? An officer who served in the intelligence service in the great war states: "Heated discussions would develop in the Flying Corps as to the status of a pilot if caught by the enemy on such a flight [i.e. spy-dropping]. Would he be treated as a spy and shot? The spiritless Hague Convention offered no clue. It was ultimately reasoned out as follows: If the Germans captured a pilot and his passenger, and the latter was attired in civilian clothes, the enemy had a right to shoot both. If the passenger was *not* dressed in civilian clothes, neither could be treated as spies. So thereafter all spies carried over the lines to be dropped wore uniform and changed into civilian clothes on landing."² As explained later, the position is hardly so simple as this statement would imply, but it is in the main a correct exposition of the law of the matter.

The writer has been unable to discover any actual case in which a pilot was condemned and executed for landing a secret agent. Two pilots were, however, twice tried by court-martial by the German authorities on the charge of suspected espionage. These pilots, Sergeant James J. Bach, an American volunteer serving in the French aviation, in one machine, and a French pilot in another, landed (in the spring of 1915) two French soldiers, dressed as civilians, with a large quantity of explosives, behind the German lines near Mezières. In taking off again, both machines were damaged, and Bach and the French pilot hid in the woods until the two French soldiers

p. 207. M. Baring (*R.F.C.H.Q.*, p. 133) tells of the capture of a German officer who provided for all eventualities by bringing his luggage with him; and the German pilot Frankl found that a British pilot whom he brought down and whose name (he states) was Wingfield, had similarly provided himself with toilet necessaries and books (Letter of Frankl, quoted in *La Guerre aérienne*, 1 November, 1917, p. 816).

¹ See pp. 81-2.

² Capt. F. Tuohy, *The Secret Corps*, 1920, pp. 140-1.

had gone from the neighbourhood. "If the four men should be captured, and it could be proved that the two soldiers had been landed by the airmen, death was certain for all of them." After a while the two pilots started homewards but were soon captured. "Suspicion against them was strong, and they were twice court-martialled, on 20 October and 30 October, 1915. The first time there was no verdict, and the second, owing largely to the able defence of a German lawyer, they were found not guilty." They were subsequently held for more than three years as prisoners of war.¹

The German and Bulgarian attitudes.—The fact that these two pilots were brought to trial by the German authorities proves that those authorities regarded airmen engaging in work of this nature as tainted with the character of the agents whom they conveyed. Further evidence that this was the official German view is to be found in the protracted interrogatory of another French pilot, Sous-lieutenant Paolacci, who was captured after landing a special agent fifty kilometres behind the lines. The Germans strongly suspected him of having landed a spy but could not prove that he had done so, and eventually gave him the benefit of the doubt and treated him as a prisoner of war.² A British flying officer who was captured by the Bulgarians in September, 1918, after he had landed another officer behind the Bulgarian lines, states that, after being questioned, "I was informed that in all probability I should be shot as a spy. I told them that as I was wearing my King's uniform they could not do this according to international law, but they replied it was not Bulgarian law."³

¹ Hall and Nordhoff, *The Lafayette Flying Corps*, i. 100-1; P. A. Rockwell, *Les Américains à la Légion*, in *La Guerre aérienne*, 19 July, 1917, p. 571 (where it is stated that Bach landed to rescue the French pilot, whose machine was on fire, and that Bach was court-martialled twice on the charge of being "a spy and an American franc-tireur"); J. R. McConnell, *Flying for France*, p. 11, and article on "Verdun" in *La Guerre aérienne*, 27 September, 1917, pp. 722-4; B. A. Molter, *Knights of the Air*, p. 232 (where it is stated that Bach's mission was to pick up spies behind the German lines, that the French pilot accompanying him crashed on landing, and that Bach landed to rescue the French pilot).

² *La Guerre aérienne*, 16 January, 1919, pp. 38-9. Another pilot, Sergeant Hensch, who was captured immediately after he and his passenger had completed their mission, was also treated as a prisoner of war, but it is not clear whether his was a similar case; he and his companion may have been in uniform (*La Vie aérienne*, 20 March, 1919, p. 187).

³ H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 119. The officer was Lieut. W. J. Buchanan. It is not clear whether the officer whom he landed was in uniform or not; if he was in uniform, neither he nor the pilot could be regarded as guilty of espionage. It is perfectly lawful to land a scout—a military person in uniform—behind the enemy's lines.

(He was subsequently informed that it had been decided that he would not be shot.) Bulgarian law had, of course, nothing to do with the matter; it was a question of international law, and under international law, the officer's reply was perfectly correct, provided always his connection with a spy could not be established. If, however, it were proved that he had just landed a spy, the position (as explained later in this chapter) was by no means so clear.

The views of the flying officers.—The flying officers themselves appear to have had little doubt that, if captured, they were liable to be treated in the same way as their passenger. "The risk which the agent ran was heavy, of course," says Capt. Wedgwood Benn. "Had it been discovered how he had got down and what his purposes were, he would have received short shrift from the enemy. In the event of a forced descent we shared this risk, for the nacelle was unmistakably constructed to drop spies."¹ A press correspondent who was allowed in August, 1918, to give some particulars of the exploits of Védrières, stated that "Védrières knew perfectly well that if he was caught he would be shot, but he always volunteered for these dangerous missions."² It must, of course, be remembered that the gallant officers concerned were not necessarily qualified to pronounce upon the difficult question of international law concerned, and, indeed, were not always clear exactly what "espionage" covered.³ It does, however, appear that there was at least some military opinion in favour of assimilating the pilot engaged in special missions to the agent whom he carried, and, as the question will eventually be settled by the practice of belligerents, such opinion is not without importance. Regard must, of course, also be paid to the general principles of the law of war in deciding a question of the kind.

The arguments for treating the pilot as a spy or war traitor.—Under the hitherto accepted law and practice of land warfare, the wearing of uniform has always been held to protect, normally, an officer or soldier from a charge of espionage. The only exceptions to this rule have been the cases in which

¹ Wedgwood Benn, *In the Side Shows*, 1919, p. 289.

² H. J. Greenwall, in the *Daily Express*, 30 August, 1918 (quoted in *The Aeroplane*, 4 September, 1918). See also C. D. Winslow, *With the French Flying Corps*, pp. 149-50, and the quotation from Hall and Nordhoff given at p. 285 above.

³ Thus one finds Major Elmer Haslett (*Luck on the Wing*, 1920, p. 15) describing all aerial reconnaissance as spying. The war pilot, he says, is a "genuine sky spy," and "like the spy, too, he lived within the lines of the enemy."

the officer or man concerned has abused an immunity granted to him in a certain capacity in order to obtain military information under false pretences ; as, for instance, where he has secured admission to the enemy's lines under a flag of truce, the Red Cross flag, or a safe conduct.¹ No similar abuse of a privileged position can be alleged against the pilot who lands a spy or other special agent. On the other hand, the justification for the drastic treatment of spies is the necessity to provide an adequate deterrent against acts which are at once very damaging and very difficult to detect, and the same justification could be advanced for attaching to the conveyance of the spies a liability so heavy as to make the service an unpopular one. Moreover, to assist, favour, or conceal a spy or war traitor is held to be equally punishable with the espionage or war treason itself ; ² though here it must be added that the assistance, etc., contemplated in this rule are undoubtedly of a nature different from the air conveyance now in question, and never really considered by the framers of the rule. It is beyond question that arguments would not be lacking in support of the contention that a pilot who is captured in the act of conveying, landing, or taking up again a spy or a war traitor should be subjected to the same treatment as the person whom he conveys.

The other side of the case.—On the other hand, the war law in regard to espionage and war treason is in some respects illogical and unsatisfactory. The agent is severely dealt with ; his principal—the commanding officer who sends him upon his dangerous mission—incurs no liability, even if he falls into the enemy's hands. It is true that the spy himself is free from liability if he has succeeded in rejoining his own forces ; he cannot be punished upon subsequent capture for a prior, completed act of espionage. But a war traitor who is subsequently captured may be charged with a prior, completed act of war treason, whereas there is no precedent for attaching a corresponding liability to the officer who authorised the act, if he happens to be captured. The war law of the matter is, in fact, the relic of conditions now largely obsolete. Nearly sixty years ago the greatest of modern German jurists drew attention to the undue severity of the treatment of spies and

¹ See Edmonds and Oppenheim, *Land Warfare*, § 165 ; *American Rules of Land Warfare*, § 199.

² *Land Warfare*, § 172 ; *American Rules of Land Warfare*, § 211 ; German official *Kriegsbrauch im Landkriege*, p. 31 ; Swiss official *Conventions internationales concernant la Guerre sur Terre*, p. 28.

suggested that the death penalty should be reserved for exceptional cases.¹ Is it too much to ask that what Bluntschli then wrote should be remembered in connection with this open question of the treatment of (at any rate) the uniformed pilots who are captured when engaged on special missions? Shooting the very few who are captured will never stop others from volunteering for the duty, and if the risk they run is not, in fact, deterrent, the real justification for the drastic penalty disappears. The practice of belligerents must determine the custom of war in regard to their treatment and publicists should be slow to lay down any dogmatic rule in a matter which is still unsettled. But it may at least be hoped that practice will incline to inflicting some less punishment than death (e.g. a term of imprisonment) upon combatant airmen proved to be engaged in the conveyance of spies or war traitors.

Some special cases.—Neither the sex of the spy or war traitor, nor his or her neutral nationality, is any bar to trial and punishment for espionage or war treason. Neutral subjects have frequently been executed for espionage,² and the number of women spies condemned and shot in France in the late war was remarkable.³ There is some evidence that on at least one occasion women were landed by aircraft for purposes of

¹ Bluntschli, *Droit international codifié*, § 628. The German work, of which this is the French translation, was first published under the title of *Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt*, in 1868.

² Thus a Swiss subject named Nivergeld was condemned for spying and shot at Vincennes on 2 May, 1918, and a woman described as "of Geneva"—Celestine Gay—was sentenced to death by a French council of war at Troyes on 21 June, 1915. See the *Kriegsbruch im Landkriege*, p. 31, where the nationality of the spy is stated to be immaterial.

³ The following women spies were condemned to death in France: Marguerite Schmitt, executed March, 1915; Ottilie Voss, executed May, 1915; Mdle. Lallart, condemned to death August, 1915; Marie José dei Basi, condemned to death January, 1916; Marguerite Zell (Matahari), executed October, 1917; Regina Diane, executed January, 1918; Josephine Alvarez and Victorine Francher, executed May, 1918; Sidonia Ducret, condemned to death June, 1918. (In some of these cases only the condemnation to death and not a subsequent execution is recorded, but probably *all* were executed.) One French woman spy, Mme. Berroyer, who supplied valuable information from Lille during the German occupation, was arrested and imprisoned but not shot; after the war she was appointed Chevalier of the Legion of Honour and was awarded the Croix de Guerre and the Military Cross. She died in Lille in February, 1924 (see *The Times*, 18 February, 1924). In England a woman named Eva de Bournonville was sentenced to death at the Old Bailey early in 1916 but her sentence was commuted to penal servitude for life (reply of Mr. Herbert Samuel in House of Commons, 17 February, 1916). Another woman spy, Louise Mathilde Smith, was sentenced at the Old Bailey on 4 March, 1918, to 10 years' penal servitude for espionage (*Times*, 5 March, 1918). That the age or sex of a spy is immaterial is laid down in the British and American official manuals on Land Warfare (§ 173 and § 201 respectively).

espionage in the late war.¹ The employment of non-military aircraft for espionage may also be a feature of the wars of the future. If either a member of the crew or a passenger in an aircraft of belligerent, enemy, or neutral nationality, not being a belligerent military aircraft, collects or seeks to collect information in a zone of operations for one belligerent and is captured in the same flight by the other, the person implicated would be chargeable with espionage: as would also an individual in a flying ambulance (which would be a belligerent military aircraft) if he acted similarly when admitted under the Red Cross immunity to an operational zone.² In all such cases there would be evidence of clandestinity or false pretences, justifying the arraignment of the person concerned on a charge of espionage. It is rather for cases of this kind than for the special missions referred to in this chapter that the rules on the subject of espionage proposed by the Commission of Jurists who sat at The Hague in January-February, 1923, appear to provide.

The rules proposed at The Hague, 1923.—The rules proposed were :—

Art. 27.—Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretences he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

Art. 28.—Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the Land Warfare Regulations.

Art. 29.—Punishment of the acts of espionage referred to in Arts. 27 and 28 is subject to Arts. 30 and 31 of the Land Warfare Regulations.³

These rules will be useful if civil (including neutral) air traffic becomes at some time common in countries that are

¹ Capt. F. Tuohy (*The Secret Corps*, 1920, p. 140) states that the French landed "a pretty dancing girl" near Brussels, for the purpose of espionage in that city; she failed to return to the appointed rendezvous a week later. It was also reported that in the *débris* of the German airship which was destroyed at Révigny in March, 1916, the remains of a woman and a pair of woman's shoes were discovered, and it was surmised that a female "spy" was being carried, to point out the French positions (*Flight*, 20 March, 1916, from *Le Petit Journal*).

² Or when a belligerent military aircraft was admitted under a safe-conduct or flag of truce, if the admission of an aircraft under either is conceivable.

³ The Land Warfare Regulations referred to are as follows :—

"Art. 30.—A spy taken in the act shall not be punished without previous trial.

"Art. 31.—A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy."

at war or in zones of operations, but they do not serve to solve the more practical problem, at present, of the treatment of air personnel captured while engaged on special missions. So far as espionage by military aircraft is concerned they do not add very much to what would, in any case, be the "common law" rule of international law.

Espionage and false marks.—Espionage by dismounted airmen would come under the law of land warfare. Rules regarding other forms of espionage are the less necessary in air warfare because almost every case can be brought under the alternative head of the use of false marks. Take such an incident as that recorded by Group-Capt. A. J. L. Scott as having occurred in France in December, 1917. A French Bréguet aeroplane landed one day in the aerodrome of No. 56 Squadron, Royal Flying Corps; the pilot, apparently a French officer, stayed there for a couple of nights and then resumed his flight to the north. Subsequently it was ascertained (long after the event) that he was really a German masquerading as a Frenchman and that his machine was a captured French one. The same pilot is stated to have played a similar trick upon a French squadron, this time posing as a British pilot and using a captured British machine.¹ The existence of French and British squadrons in the same theatre of war, added to the linguistic powers of the German pilot, made possible in this case a daring piece of bluff and of clever intelligence work which could hardly have been successfully carried out in more normal and less favourable circumstances. But the point which the writer wishes to emphasise is that, if detected, the pilot could have been charged either with espionage or with the use of false marks. A clear case against him could have been established under either heading.

¹ A. J. L. Scott, *History of Sixty Squadron*, 1919, pp. 119-20.

CHAPTER XIII.

PROPAGANDA BY AIRCRAFT.

The nature and kinds of propaganda.—The enormous importance of propaganda as a means of weakening the enemy's will to resist was recognised by all the belligerents in the great war. That war is, in essence, a contest in psychopathy was fully understood. The difficulty was to secure for the war news as it appeared to each Power engaged the desired publicity in the enemy's country. The ordinary channels of entrance were closed by a rigorous censorship which was fully alive to the need for exclusion of all intelligence of a defeatist tendency. The suitability of the aeroplane as an instrument of distribution of propagandist leaflets was in these circumstances quickly apparent.

The propaganda which is of value in war can be directed to two distinct ends and may address itself to either or both of two constituent parts of the enemy people. (Propaganda in neutral countries may be disregarded for the present purpose.) It may be military intelligence, as viewed from one angle, and designed to weaken the fighting fibre of the enemy's troops; in that case it will be addressed to the troops rather than the population at large. It may, on the other hand, be intended to influence the "home front" and to affect the moral of the whole enemy nation; it will, in that event, make a wider appeal. The latter kind of propaganda may again be divided into two subsidiary sections, corresponding to the nature of the purpose which it seeks to achieve. It may be either propaganda of a restricted scope, intended to weaken the military effort of the enemy nation in the war in which it is engaged and to instil the idea in the national mind that victory is impossible; or propaganda of a tendency at once more far-reaching and dangerous, designed to disturb and upset the whole political structure of the enemy State, to incite to revolution, and to achieve military success by the indirect

method of destroying the social organisation of the unity attacked.

The legality of propaganda.—The legality of certain forms of propaganda in war has often been the subject of discussion in the writings of jurists.

"It is controversial," says Oppenheim, "whether a belligerent acts lawfully who bribes a commander of an enemy fortress into surrender, incites enemy soldiers to desertion, bribes enemy officers for the purpose of getting important information, incites enemy subjects to rise against the legitimate Government, and the like. If the rules of the Law of Nations are formulated, not from doctrines of book-writers, but from what is done by belligerents in practice, it must be asserted that such acts, detestable and immoral as they are, are not considered illegal according to the existing rules of the Law of Nations."¹ There can be little doubt that, under the practice of war, objection has not been raised by belligerents in modern times to attempted incitements of their troops to desert or surrender, and the only point upon which any real doubt existed was the legality of fomenting political disturbances in an enemy State.² That a belligerent was entitled to take advantage of such disturbances if they arose was not doubted, but it was an open question whether he was entitled to take the initiative in bringing them about.³

The propaganda in the great war.—The propaganda employed in the great war encompassed all the ends referred to in the second paragraph of this chapter, and the leaflets, proclamations, manifestos, etc., dropped from aircraft, included incitements to surrender in the field, news "doctored" to show the hopelessness of the continued resistance of the enemy, and artfully-worded insinuations or express suggestions that the enemy people were being made the blind instruments of their odious rulers and would be well advised to depose them. Nothing was left undone to create in the national mind of the enemy army and population a widespread "complex of defeatism" and an impression that some revolutionary change of government was their sole hope of salvation. That the heaven worked in Russia, first, and then in the Central Empires, there can be no shadow of doubt.

¹ Oppenheim, *International Law*, 1921, ii. § 162.

² See the present writer's *War Rights on Land*, 1911, pp. 140-50.

³ See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1088 (1), quoting from Mérignhac, *Les lois et coutumes de la Guerre sur terre*, pp. 169-70.

Hindenburg's testimony.—To the influence upon the catastrophe of the great drama of 1914-18 of the aircraft propaganda the greatest actor in that drama has testified in almost unmeasured terms: "The enemy," says Marshal von Hindenburg, "intensified the process of demoralisation not only by his blockade and the semi-starvation it involved, but by another method, known as 'Propaganda in the Enemy's Camp.' This was a new weapon, or rather a weapon which had never been employed on such a scale and so ruthlessly in the past. . . . The shower of inflammatory pamphlets fell not only behind our fronts in East and West, but also behind the Turkish fronts in Iraq and Syria. . . . In the shower of pamphlets which was scattered by enemy airmen our adversaries said and wrote that they did not think so badly of us; that we must only be reasonable and perhaps here and there renounce something we had conquered. Then everything would soon be right again and we could live together in peace, in perpetual international peace. . . . What a blessing peace would be after all the fighting! There was, therefore, no point in continuing the struggle. Such was the purport of what our men read and said. The soldier thought it could not all be enemy lies, allowed it to poison his mind, and proceeded to poison the minds of others."¹

Messages and protests conveyed by air.—Messages were also dropped by aircraft occasionally for purposes other than those mentioned; for instance, to encourage the nationals of or sympathisers with the country to which the aircraft belonged under the stress of enemy domination,² and to protest against

¹ Von Hindenburg, *Out of My Life*, Eng. trans. by F. A. Holt, 1920, pp. 314, 392. Hindenburg does not expressly challenge the legitimacy of the propaganda to which he refers, but he speaks of it as if it were a not very honourable mode of warfare. "It is the result," he says, "of the adversary's conviction that he is no longer strong enough to defeat his enemy in open and honourable fight and conquer his moral resolution merely by the victory of his triumphant sword" (p. 314). Ludendorff (*My War Memories*, Eng. trans., pp. 2, 360-9) ascribes to the general propaganda of the *Entente* and America the principal responsibility for the German collapse in the autumn of 1918.

² Thus the people of Liège and of Antwerp were encouraged by this means in the early part of the war (*Flight*, 28 August, 1914; *The Times*, 8 December, 1914, quoting the *Rotterdamsche Nieuwsblad* of 7 December, 1914); so, too, were those of Brussels: see J. H. Twells, *In the Prison City*, 1919, pp. 61-2, and V. Thurstan, *Flying Column and Field Hospital*, 1915, pp. 53-4, where an English nurse who was in the city at the end of September, 1914, testifies to the cheering effect of a message of encouragement dropped by an aeroplane from Antwerp. *Sachetti* containing greetings to the people of Trieste were dropped upon that town by D'Annunzio in August, 1915 (*Diario della Guerra d'Italia*, i. 270). On 23 July, 1916, the French pilot, Capt. Moreau, dropped in Strassburg a mannequin in French uniform, with a tricolour *banderolle* and French newspapers stuffed in his pockets (*La Vie aérienne*, 13 March, 1919, p. 174). The offensive on the Somme was made known to the

some procedure by the enemy regarded as indefensible.¹ In the latter case aircraft performed a duty usually assigned in earlier wars to a "flag of truce" or *parlementaire*.

Unofficial messages.—Some of the messages dropped were undoubtedly unauthorised by the responsible authorities of the forces to which the aircraft belonged. "Please give your bloody Flying Corps a rest" is stated to have been the wording of one dropped in the British lines in France in July, 1916;² it was undoubtedly an unauthorised one. Clearly unofficial, too, was the German message dropped in Dwinsk with a five-rouble note and a request that it should be expended in the purchase of a broom, the Germans having been disgusted with the filthy condition of the city of Antwerp when they entered it.³ Another German message gave a list of impossible Allied victories, in parody of the war news then common, and conveyed other amazing announcements, such as that the Esquimaux were besieging Spandau.⁴ A greeting dropped on Nancy in October, 1914, headed "Une salutation un peu excentrique" and stating that the city would be "bientôt allemande" was evidently the work of some light-hearted subaltern.⁵ On the Iraq front, the rival airmen dropped for each others' edifica-

people of Ghent by leaflets dropped there (*Pall Mall Gazette*, 8 July, 1916). The dropping of newspapers in occupied districts was common (see *The Aeroplane*, 20 January, 1915). The French newspapers, the *Petit Parisien*, the *Temps*, the *Journal*, were dropped in the autumn of 1915 by French airmen in occupied districts (see André C.H.A., *Au-dessus des Batailles (Carnet de Guerre d'un Aviateur)*, 1917, pp. 158-63).

¹ Thus a German aeroplane scattered proclamations addressed to Gen. Rennen-kampf in September, 1914, warning him that if the Russians continued to shoot peaceful inhabitants in Eastern Prussia, he would be held personally responsible (*The Times*, 23 September, 1914). In August, 1915, Austrian aeroplanes dropped messages protesting against the alleged firing by the Italians upon hospitals (*Diario della Guerra d'Italia*, i. 334-5). In September, 1915, the Germans protested by the same channel against the Russians' devastations in their retreat in the Lutzk area; "the grain," said the note dropped, "is a gift of God and it is forbidden to burn it" (C. Lafon, *La France ailée en Guerre*, p. 184). Messages were also sometimes dropped with the object of inducing the enemy to cease bombing a named place by threatening to drop a larger number of bombs for each one dropped by the enemy; e.g. such a message was dropped by our aeroplanes at Beersheba on 12 January, 1917, in order to stop the German raids on El Arish (O. Teichman, *The Diary of a Yeomanry M.O.*, 1921, p. 107).

² See letter of an R.F.C. officer quoted in *The Times*, 18 July, 1916.

³ See *The Aeroplane*, 20 October, 1915, quoting *Morning Post* correspondent at St. Petersburg.

⁴ *Ibid.*, 8 September, 1915.

⁵ C. Lafon, *Les Armées aériennes modernes*, 1916, p. 209. See photograph of this note in *La Guerre aérienne*, 1 November, 1917, p. 804; Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, i. 64; *The Times*, 17 October, 1914, also refers to this note. A similar kind of message was dropped by German airmen on Minsk in September, 1915, stating that it would be captured on 25 September (Maj.-Gen. Sir A. Knox, *With the Russian Army, 1914-1917*, 1921, i. 337).

tion copies of *Punch*, *The Tatler*, *The Sketch*, on the one side, and of *Simplicissimus* and *Jugend* on the other, when these periodicals contained anything likely to cause particular annoyance to the other party.¹

The early propaganda.—The practice of dropping from aircraft messages of a more clearly propagandist nature is found in existence in the earliest days of the war.² Even in August, 1914, French airmen were engaged in distributing in Alsace and Lorraine leaflets, in French and German, announcing Germany's violation of the neutrality of Belgium, Great Britain's intervention in the war, and Italy's decision to remain neutral.³ At the end of the same month, a German aeroplane dropped in Paris a message running: "Parisians: The German Army is at the gates of Paris. You can do nothing but capitulate."⁴ At the beginning of October a proclamation by Gen. von Bessler was dropped in Antwerp, informing the Belgians of the uselessness of continuing to fight and advising them to give up the struggle. "You have fought long enough," ran this document, "in the interests of the Russian princes and the capitalists of perfidious Albion. Your situation is desperate. . . . If you wish to rejoin your wives and children, if you long to return to your work, stop this useless strife, which is only working your ruin. Then you will soon enjoy the blessings of a happy and perfect peace."⁵ When Antwerp fell, the news was given to Paris by a message dropped in that city.⁶

Appeals to coloured troops.—The task of seducing the Indian troops in France from their allegiance was attempted in similar fashion by the Germans. A German aeroplane which was brought down on 21 November, 1914, was found to contain

¹ Dispatch from Mr. Edmund Candler, Mesopotamia, dated 28 October, 1916, in *Daily Mail*, 19 December, 1916.

² It had, indeed, been practised before the great war; in the Turco-Bulgarian War of 1912 Bulgarian aircraft dropped, in Adrianople, leaflets informing the defenders of the uselessness of further resistance (see Gustave Cirilli, *Journal du Siège d'Andrinople*, p. 56).

³ See *Flight*, 28 August, 1914.

⁴ Maurice Thierry, *Paris Bombardé*, 1921, p. 4. C. Lafon, *Les Armées aériennes modernes*, 1916, p. 204, states that (apparently) similar leaflets were dropped in Paris on 2 and 3 September, 1914. German airmen appear to have begun to drop the *Gazette des Ardennes*, a propagandist journal, in France about the end of October, 1914. See *The Aeroplane*, 11 November, 1914.

⁵ *The Times*, 4 October, 1914; Buchan, *History of the Great War*, i. 293.

⁶ *La Guerre aérienne*, 14 February, 1918, p. 231. A German source quoted the actual message as follows: "Antwerpen ist genommen, Ihr kommt nächstens heran. Herzliche Grüsse. Die Feldfliegerabteilung 3 und General v. Deimling" (Mahlke, *Hoch in den Lüften*, 1916, p. 54).

proclamations in Hindi, urging the Indian soldiers to revolt. The flaw in the ingenious German plan was that the language in which the appeal was framed was the wrong one: it should have been in Urdu, not Hindi.¹ "Riding out one day," says Gen. Willcocks, "I saw a shower of paper descending earthwards, evidently dropped from an aeroplane. They were leaflets printed in Hindi, calling on our Indian soldiers to rise against the British. . . . Here is the text:—

The Sheik Ul Islam has proclaimed a Jihad (Holy War) on the Id (a festival day) at Mecca against the British, Russians, and French. The Sultan of Turkey has started a war against the same oppressive people, and he has been joined by the King of Afghanistan.

"But German humour is at best singular. Here was an incitement to Hindus and Mahomedans alike to revolt, and yet only Mahomedans are named, and to make it more ridiculous the language was Hindi, or the language of Hindus alone. . . . The message was greeted with loud laughter and one humorous Punjabi Musalman shouted out, 'We now understand what "Made in Germany" means.'"²

A similar appeal to the feelings of soldiers of a coloured race was made by the Germano-Turkish air forces in Gallipoli in October, 1915, when they "dropped manifestos from aeroplanes along the lines of the Senegalese calling upon these troops to make terms and come over now that their white comrades had left them to have their throats cut."³ The French used aircraft in July, 1915, to drop in Lebanon proclamations recalling the traditional friendship of France for the population of that country,⁴ and also to appeal to the subjects of the King of the Hedjaz for their assistance.⁵ Propaganda leaflets were dropped by both sides. Lieut.-Col. Tennant quotes an example of a proclamation distributed by the British air force, informing the Turks of the victory of Magdhaba, near El Arish, on 23 December, 1916, and dwelling on the powerlessness of the Germans to aid their Turkish allies against the growing might of England.⁶

¹ See letter from a "non-combatant" at the front in *The Aeroplane*, 16 December, 1914; *The Times*, 25 November, 1914; *Communiqué* by the official "Eye-witness," dated 23 November, 1914, issued by the Press Bureau, 25 November, 1914; *Times Documentary History of the War*, 1919, vii. 107; G. V. Williams, *With our Army in Flanders*, 1915, p. 292.

² Gen. Sir James Willcocks, *With the Indians in France*, 1920, p. 115.

³ Sir Ian Hamilton, *Gallipoli Diary*, 1920, p. 236.

⁴ C. Lafon, *La France ailée en Guerre*, p. 223.

⁵ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 150.

⁶ J. E. Tennant, *In the Clouds above Baghdad*, p. 50.

Incitements to desertion and surrender.—The halcyon lot of prisoners who had the good fortune to be in the power of the belligerent engaged in circulating information upon the question is described in many of the leaflets dropped in the great war. The British official "Eye-witness" quotes, under date of 17 October, 1914, a German leaflet of this kind. It began: "French Soldiers.—The Germans are only making war against the French Government, which is sacrificing you and your country to the egotism of the English," and went on to describe the good treatment of prisoners, who, it was stated, were treated exactly in the same way as the German wounded—a statement which, if true, reflected no credit upon the German Red Cross.¹ The French on their side dropped proclamations in the German lines, advising the soldiers who were weary of their wretched existence to report themselves to the French advance posts, where they would be well received and would be allowed to return to their homes after the war.² News of the great German victory of the Masurian Lakes was conveyed in the same way in October, 1914, to a wholly incredulous French people.³ Austrian and German aircraft dropped proclamations in Poland in December, 1914, promising the Polish soldiers good food, tobacco, and rum, if they surrendered, and appealing to the Poles to help their "liberators."⁴

When Italy entered the war in May, 1915, the fact was made known to the German troops in the following leaflet, which was thrown into their lines by the thousand by French aeroplanes:—⁵

¹ See this report in the *Pall Mall Gazette*, 24 October, 1914, and *The Aeroplane*, 28 October, 1914. See also the German proclamations dropped at Crépy-en-Valois in December, 1914, quoted in Lafon, *Les Armées aériennes modernes*, 1916, p. 239.

² See *Daily Mail*, 30 November, 1914. A proclamation dropped by French airmen among the German troops is given in *The Aeroplane* of 23 December, 1914. It is headed "An die Deutschen und Polnischen Soldaten," and informs them that the Russian Army has gained a great victory and is marching on Thorn and Cracow, that the Tsar will keep his promise to Poland, and that all who surrender will be "als Brüder betrachten." See also Marc, *Notes d'un Pilote disparu*, 1918, p. 18.

³ "Eye-witness's" *communiqué* of 24 October, 1914. A German airman, Lieut. Werner, had already dropped leaflets in Paris stating that the report that the Russian army was at the gates of Berlin was a lie. See Werner's own statement as recorded by G. Fortescue, *At the Front with Three Armies*, 1914, p. 127.

⁴ Central News, Petrograd, report, 20 December, 1914, quoted in *Pall Mall Gazette*, 21 December, 1914; see reproduction of proclamation dropped in Poland in the *Graphic*, 2 January, 1915.

⁵ Given in facsimile in Ian Malcolm, *War Pictures Behind the Lines*, 1915, p. 166.

AN DIE DEUTSCHEN SOLDATEN.

Italien hat jetzt auch das Schwert für die gerechte Sache ergriffen.

Es kämpft jetzt auch Schulter an Schulter mit den zivilisierten Völkern gegen die Barbaren, Lügner, Fälscher und Verbrecher. Italien hat euch am 24 Mai

DEN KRIEG ERKLÄRT.

Italien zieht ins Feld mit :

2,000,000 Soldaten,

3,000 Feldgeschütze (französische 75 kanonen)

Eine zahlreiche schwere Artillerie (Krüppsche 15 cm. und französische 12 cm.).

ES IST GOTTES URTEIL !

Italy herself was soon the victim of similar propaganda. In June, 1915, the Austrian airmen dropped in the Italian lines proclamations inviting the soldiers to desert and promising, *inter alia*, a reward of 2000 crowns for every aeroplane surrendered intact.¹ Gen. Cadorna, in his report of 5 September, 1915, referred to the intensification of the enemy's propaganda of this kind and denounced the leaflets "inciting to desertion" and giving war news full of "stupid inventions."² The Bulgarians followed the Austrian example and sent their (German) aircraft over Nish to announce the imminent arrival of Bulgarian "liberators."³ They received similar attentions in turn from French aircraft, which, in April, 1916, dropped in Sofia the news of the capture of Trebizond by the Russians.⁴ The fall of Erzrum had already been announced to the Germans by Russian aircraft, in February of that year.⁵ The Germans in their turn made known to the Russian troops by leaflets dropped from aircraft the dethronement of the Tsar—by the English (it was alleged), in whose interests the Russian people were being compelled to fight.⁶ In July, 1917, German airmen distributed in the Russian lines bulletins stating that the members of the Russian Provisional Government had been arrested, that rioting had taken place in Petrograd, and that it was folly to continue fighting.⁷ A more definite incitement

¹ *Diario della Guerra d'Italia*, i. 111-12.

² *Ibid.*, i. 345.

³ C. Lafon, *La France ailée en Guerre*, p. 226.

⁴ Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 33.

⁵ See *The Times*, 22 February, 1916.

⁶ *Ibid.*, 28 March, 1917.

⁷ See *Flight*, 26 July, 1917.

to revolt was contained in proclamations dropped by German airmen in Roumania in March, 1917, and urging the peasants to rise against their oppressors in favour of the Austro-Germans, their friends and liberators.¹

The leaflet campaign against Germany.—It was when the shadow of defeat had begun to fall over the Central Empires, when the weight of America was thrown into the adverse balance, and when men's minds in Germany and Austria were unsettled, anxious and predisposed to pessimism, that the value of the propaganda distributed by the Allies' aircraft became most apparent.

One of the propaganda notices dropped by the British airmen in the winter of 1917-18 is given in German (with English translation) by the Australian official historian. Translated, it runs:—

“Soldiers! One freezes in the trenches. Come out of them! Come into a warm bed! Three hot meals a day! Where? Warm clothing! Where? Work for which you can receive pay! Where? With the English! Therefore surrender yourselves to them! The English do not kill their prisoners. In the camps of the English you may take up again your civilian employment. You will be well paid for the work you do. In the camps of the English you may write to your friends and relatives, and you will faithfully receive every letter and parcel which they send you by post. It is not unpatriotic to give yourselves up honourably to the enemy in order to be able later to return to your homes. Therefore come over and surrender, and do not go on freezing in the fire trenches.”²

Perhaps the appeal was a crude one but one can well imagine that there were spirits ready to accept it. More powerful, probably, was the effect of the political propaganda distributed by aircraft. It was by this means that the full terms of President Wilson's speech in regard to the American declaration of war were made known in Germany,³ and American airmen were largely employed at a later date in communicating to the German people the utterances of the President and other intelligence which cannot have failed to exercise an important influence upon the minds of those into whose hands the leaflets came. Some of the pilots who were engaged in this work have described how it was done. Lieut. W. A. Wellman states that, when detailed to drop copies of President Wilson's message

¹ See *The Times*, 20 March, 1917.

² F. M. Cutlack, *The Australian Flying Corps* (vol. viii., *Official History of Australia in the War*), 1923, pp. 208-9.

³ See *The Times*, 12 April, 1917.

to Congress behind the German lines in February, 1918, the American pilots in the French Escadrilles carried the leaflets in small parcels tied with twine; often the twine would break and the pamphlets would go fluttering down like feathers.¹ Another American flying officer states that the literature forwarded to the airmen for dropping in the German lines included such things as a "fake news-sheet purporting to emanate from Berne," giving the latest news of the Allied victories; a similar sheet from Holland, showing that "William and his associates had been operating the business at a loss and were about to be sold up"; and a "dainty little card printed in tricolors that touched the heart with its human appeal," containing a letter from a German soldier, a prisoner in France, describing in glowing terms the kindness and generosity with which the French treated their prisoners. The password to Elysium, *Kamerad, ne tirez pas*, was followed by its phonetic equivalent—"Nuh tiray pah"—so that the simplest could use it; and finally "about twenty pounds of Wilson's speech!" The particular officer who writes very nearly crashed as a result of "a bit of Wilson's speech getting into his engine!"²

A facsimile of one of the American leaflets dropped in October, 1918, is given in a war history and shows on a map of France and Belgium the extent of the German retreat between 15 July and 10 October, 1918, and the numbers by which the Allied forces were increased (by the arrival of United States troops) and the German forces depleted (by loss of prisoners).³

The results of the propaganda.—The results of the propaganda by air were not always immediately apparent.

Speaking of the dropping in the German lines and behind them of newspapers "designed to carry the gospel of democracy to the Boche," Lieut. B. A. Molter says: "Little fruit has fallen as yet as a result of this work, or if it has it hasn't made much of a thump, but the delivery goes on with the

¹ W. A. Wellman, *Go, Get 'Em*, 1918, pp. 191-4. Lieut. Wellman flew twenty-five miles into Germany to "deliver" pamphlets at Saarburg and Mittersheim.

² Letter quoted in Hall and Nordhoff, *Lafayette Flying Corps*, ii. 135-7.

³ See *New England Aviators*, i. 118. There will also be seen at p. 165 of Winslow, *With the French Flying Corps*, a photograph of a handbill headed "La Voix du Pays," dropped in Germany by French aviators. Another photograph of a "tract" dropped by a French airman may be seen in *La Guerre aérienne*, 30 January, 1919, p. 55; it bears the words: "Wilhelm II., annoch deutscher Kaiser, wir klagen dich an!" This particular tract saved the life of the pilot (Adjutant Macé) who carried it, for it stopped a bullet fired at him from the ground, on 4 April, 1918, near Château-Salins.

utmost regularity and with the greatest faith that persistence will win."¹ He was writing early in 1918; perhaps a year later he would have appreciated more highly the results of the steady bi-weekly drenching of Germany with the "poison" propaganda of which the French and American airmen were perhaps the most effective distributors. In any case, tangible results were attained sometimes. E. C. Parsons, of the Lafayette Squadron, states that after his squadron had dropped in the German lines a number of "tracts" advising the German soldiers to surrender and promising them good treatment, about fifty Germans came over in his sector alone the very next night (6 May, 1917), to give themselves up.²

Equally remarkable was the immediate response in some cases, at least, in the operations on the Salonika front. In the fighting on the Tcherana, for instance, on that front, in October, 1916, we are informed by Mr. G. Ward Price, *The Times* correspondent, that the Serbians "had photographs taken of long files of Bulgarian prisoners drawing rations, with a loaf of bread under their arm and a bowl for soup in their hand. Two thousand copies were printed and the Bulgarians who had surrendered were invited to write messages on them to their comrades, saying how they had been received. The 2000 picture post-cards were then dropped by aeroplanes into the Bulgarian lines. Since then surrenders have been much more frequent and prisoners always try to bring with them a copy of the photograph, which they regard as a kind of safe-conduct. One man said that he had paid 15 fr. (12s.) for his and carried it always with him in case he should be captured."³ "Results" were also obtained in Palestine. A Turkish officer who, with his servant, deserted to the British forces in June, 1918, is stated by Capt. John More to have "admitted that the propaganda leaflets which were dropped from aeroplanes, or tied on the Turkish wire by our patrols, were having a very good effect, and that the Turkish authorities were much alarmed at the large number of desertions which were of daily occurrence. Any Turkish soldier discovered with one of these pamphlets in his possession was heavily punished. . . . He referred to a paragraph in one of our propaganda pamphlets in which it was stated that 'Turkish prisoners would be

¹ B. A. Molter, *Knights of the Air*, p. 190.

² E. C. Parsons, *L'Histoire de l'Escadrille La Fayette*, in *La Guerre aérienne*, 7 November, 1918, p. 830.

³ G. Ward Price, Salonika, 24 October, 1916, *The Times*, 25 October, 1916.

treated well, etc.,' and was rather nettled at having been obliged to walk down from the front line as far as Ramallah. We pointed out that it was impossible to keep a special fleet of motor-cars near the front line for the conveyance of prisoners!''¹

Evidence of its important influence.—The best evidence of the effectiveness of the leaflet campaign is the anxiety which this kind of propaganda caused to some of the belligerents when their own troops or populations were the recipients of the messages. In a memorandum drawn up and submitted by Gen. Ludendorff to the Chief of the General Staff of the Field Army, under date of 29 July, 1917, on the subject of the "Patriotic Education of the Troops," it is stated, *inter alia*, that:—

"Everything which is likely to prejudice the *moral* of the troops, e.g. leaflets sent down from the air by the enemy or sent out from home, must be kept at a distance."²

"Words are battles to-day," said a further memorandum submitted by Gen. Ludendorff to the Imperial Chancellor early in 1918. "The right word is a battle won. The wrong one is a battle lost."³ In a proclamation issued to the German army and people in September, 1918, Hindenburg counselled that no attention be paid to the leaflets dropped by the Allied airmen—"leaflets intended to kill the soul."⁴ The importance of keeping at bay those dangerous emissaries which came not in flesh and blood but in the form of printed words was apparently appreciated first in Russia. The evidence is obscure but there is some reason to believe that at least one German airman was shot after capture for dropping "incendiary leaflets" in Russia in the first winter of the war.⁵ It

¹ More, *With Allenby's Crusaders*, 1923, p. 190.

² Quoted in Ludendorff, *The General Staff and its Problems*, Eng. trans., ii. 388.

³ Ludendorff, *op. cit.*, ii. 557.

⁴ Reuter message from Amsterdam, 5 September, 1918, in *Daily Mail*, 7 September, 1918.

⁵ The Petrograd correspondent of the *Morning Post* stated in April, 1915, that: "Since the Russians took to shooting at sight any aviators captured with incendiary leaflets there has been a great deal less billsticking on the part of the German aeroplanes. According to present practice I understand that bombs found in an aeroplane are only potentially fatal to the German aviator. He is generally able to save his life by parting with information. But no mercy is shown to those carrying incendiary leaflets" (quoted, *The Aeroplane*, 28 April, 1915, and *Flight*, 30 April, 1915). The correspondent who sent this message was not, however, altogether reliable, and one would like some independent testimony in regard to the reported execution of the German leaflet-droppers. The only such testimony which the writer has been able to find is the statement which was made to Capt. Scholtz and Lieut. Wookey by a German intelligence officer when they were captured in the circumstances described later in this chapter, that the Russians had shot a German aviator for dropping leaflets.

was only two years later that the German authorities awoke, apparently, to the fact that the practice of leaflet-dropping was likely to damage them more than the enemy. That a change of view took place is shown by the different manner in which Lieut. Marchal, the French pilot who was captured in June, 1916, after dropping proclamations upon Berlin, accusing the military advisers of the German and Austrian Courts of letting loose the war,¹ and Capt. Scholtz and Lieut. Wookey (see later), were treated. No punitive measures were taken against Lieut. Marchal, whereas the two British officers were brought to trial for "treason"; and in December, 1917, it was reported unofficially from Petrograd that the Germans had warned Russian aviators dropping Maximalist proclamations that they would be shot if captured.²

The Austrian and Italian air propaganda.—A similar change of view took place in Austria, at, apparently, a slightly later date. During the winter of 1917-18 Austrian airmen were themselves engaged in an intensive campaign of leaflet-dropping in Northern Italy. In December, 1917, a British war correspondent described the "fairy-tale" books which were being dropped in that country; their *motif* was the particularly ogreish character of the British forces then assisting Italy, and they contained pictures of blood-spattered British officers, revolver in hand, standing in the streets of Milan and performing police duties of a sanguinary nature in the interests of England. Italy, according to these leaflets, was "the new English colony," and was nothing but the deluded dupe of a rapacious England.³ Similar leaflets were still being dropped at the beginning of February, 1918.⁴ A few months later the Austrian authorities had apparently come to the conclusion that the game did not pay. It is probable that they were driven to that conclusion by the daring and successful propagandist work performed by D'Annunzio and other Italian airmen. Leaflets informing the Austrian troops and civilians of the defeat of the Empire's arms were widely distributed in the summer of 1918.⁵ Vienna itself, which had already received

¹ See *The Times*, 25 July, 1916; *Flight*, 27 July, 1916; *The Aeroplane*, 2 August, 1916.

² See report in *The Globe*, 8 December, 1917.

³ See dispatch by Mr. Ward Price in *The Times*, 18 December, 1917. The disaster of Caporetto in October, 1917, was partly due, it has been stated, to the influence of the leaflet campaign upon the moral of the Italian soldiers (see Capt. F. Tuohy, *The Secret Corps*, 1920, pp. 72-3).

⁴ See *The Times*, 7 February, 1918.

⁵ See report by Mr. J. M. N. Jeffries in the *Daily Mail*, 28 June, 1918.

messages from the sky in September, 1917, was visited by Major D'Annunzio and his "Serenissima" squadron in August, 1918, and manifestos were dropped there containing an appeal to the people in the following terms:—

"People of Vienna, you have the reputation of being intelligent, but why have you put on Prussian uniform? You see that the whole world has turned against you. Will you continue the war? To continue it is suicide for you. What do you hope for? For the decisive victory promised to you by the Prussians? Their decisive victory is like the bread from the Ukraine. One dies while waiting for it. . . ." ¹

Another statement in the leaflets was:—

"The Entente will never conclude peace with the present Governments of Austria and Germany, but is ready to conclude peace with the German people and the nationalities of Austria as soon as the military castes are swept away." ²

The booklets dropped by the Italian airmen in the Austrian trenches on the Carso in the autumn of 1917 "contained photographs of Austrian prisoners of war in Italian camps, very contented apparently, and explanations in German, Magyar and various Slav tongues, showing

"men who yesterday were living from hour to hour in peril of death, now waiting happily and calmly in perfect safety for the war to end, when they shall return to their homes to embrace once more their wives and little children. Here you will be able to recognise many of your friends."

"A good propaganda to induce desertions and surrenders!" ³

The Austrian threat of punitive measures.—The effect of such messages as those quoted upon the minds of a people already weary of the war cannot have been negligible. The measure of the importance of such propaganda is, indeed, furnished by the drastic step which the Austrian authorities took to stop it. An order issued by the Austrian military

¹ Report of Mr. Ward Price from Italian Army Headquarters, 9 August, 1918, in *Daily Mail*, 10 August, 1918; extract from *Giornale d'Italia* quoted in Reuter, Rome, message to *Evening News*, 10 August, 1918.

² Exchange telegram from Rome, 10 August, 1918, in *Daily Mail*, 12 August, 1918. The aircraft leaflets were, of course, only one particular form of a propaganda which took many shapes. For instance, when the Austrian and Italian armies were confronting one another in April to June, 1918, Czech prisoners who were serving with the Italians helped to undermine the Austrian troops' moral by serenading them with Bohemian songs and playing gramophones in "No Man's Land" (G. M. Trevelyan, *Scenes from Italy's War*, 1919, p. 208).

³ H. Dalton, *With British Guns in Italy*, 1919, p. 46.

commander at Innsbruck in September, 1918, contained the following passage :—

“ The dropping of manifestos and proclamations by enemy aviators constitutes a crime against the State. Any aviator who drops such manifestos, or even has them in his possession, thus puts himself outside international law, and will be considered as guilty of a crime punishable with death.”¹

Protest was at once made both in England and in France. Mr. James Hope, one of the Lords of the Treasury, replying to a question in the House of Commons on 23 October, 1918, stated that His Majesty's Government had received no official corroboration of the Austrian order, reported in an Austrian newspaper, that British aviators who dropped leaflets over the enemy lines would, if captured, be sentenced to death. He added that the Government was informing Austria that, if such an order had been issued and was to be carried into effect, the sternest measures of reprisals would be instantly taken. The French Government warned Austria that for every French airman sentenced for dropping leaflets, two Austrian officers would be executed.² The Austrian order does not appear to have been carried into effect.

The Scholtz-Wookey case.—The “ leading case ” in the international law on the subject of leaflet-dropping is that in which two British officers, Capt. E. Scholtz and Lieut. H. C. Wookey, were concerned, in the latter months of 1917. The case gave rise to a considerable amount of discussion at the time and subsequently, and that discussion was not always very well informed.³

According to Mr. Wookey's own account of the whole case, as kindly supplied by him to the writer, the two officers were shot down and captured near Cambrai on 17 October, 1917. They were taken to the 2nd Army Headquarters at Le Cateau

¹ The text of the order is given in the *Evening Standard*, 3 October, 1918.

² See Garner, *Int. Law and the World War*, i. p. 495; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (23), (45).

³ It was, for instance, supposed that the leaflets which the officers dropped were of a political character. See Garner, *loc. cit.*, where it is stated (on the authority of the *New York Times*) that they were copies of President Wilson's declaration of peace terms. If they had been the action of the German authorities would have been more understandable; as a matter of fact, the leaflets were of a military, and not of a political, character. They were, indeed, of a kind which the Germans had frequently themselves distributed from the air, without (it may be added) protest from the Allies. The date of the condemnation of Capt. Scholtz and Lieut. Wookey is given, incorrectly, as February, 1918, both by Garner, *loc. cit.*, and by Fauchille-Bonfils, *Droit Int.*, ii. § 1440 (45).

and there interrogated by Capt. von Loehneysen, of the Intelligence Staff, who informed them that the German Government had notified the Allies in April, 1917, that the dropping of pamphlets was considered illegitimate and that airmen guilty of the practice were liable to be brought before a Field-General Court Martial and to be shot. The pamphlets, Mr. Wookey states, were descriptions of the happy life of prisoners of war in British hands. On 22 November, 1917, the officers were shown the charge sheet, which referred to two separate alleged offences: the distribution in September, 1917, of pamphlets detrimental to the German troops, and the attempted distribution, on 17 October, 1917, of pamphlets describing the favourable conditions in the English prison camps and intended to induce German soldiers to desert. On 1 December, 1917, the officers were placed on trial at Le Cateau before a court composed partly of civil and partly of military judges, sitting with a jury. They were defended by a German advocate. The prosecutor asked that Lieut. Wookey should be sentenced to death and Lieut. Scholtz to 10 years' hard labour. They were found "Guilty of treason" and sentenced to 10 years' hard labour.

On 7 January, 1918, the officers were informed that the sentence had been confirmed and about a fortnight later they were removed from Le Cateau to the criminal prison at Rheinbach, where they were kept with ordinary convicts. In April they were informed that "a telegram had been received from the Kaiser graciously pardoning us and that we should be sent in due course to a prison camp." They were removed about a week later to Karlsruhe.

Explanation of the German change of attitude.—The reason for the remission of the sentence was by no means the gracious clemency of the Kaiser; it was the threat of reprisals by Great Britain. The sentence passed upon the officers became known in England at the beginning of February, 1918.¹ The Government promptly took action. An evidently inspired statement was published in the press on 6 February, that "the British Government do not recognise the distribution of leaflets from the air as a breach of International Law";² and on 12 February the Dutch Minister at Berlin handed to the German authorities a notification that if the sentence was carried out

¹ See *The Times*, 2 February, 1918, quoting from the *Deutsches Tageszeitung* of 1 February, which published the result of the trial of 1 December, 1917.

² *Ibid.*, 6 February, 1918.

Great Britain would resort to reprisals.¹ Under the agreement made in the previous year between the two Governments in regard to reprisals upon prisoners of war, a month's grace was necessary before the reprisals could be put in force, and this period was due to expire on 12 March. Whether the German authorities would recede from the position which they had taken up was uncertain until the eleventh hour. It appeared, indeed, for a time that they were unlikely to do so. Statements were circulated in the German press that the Allies had been the first to imprison airmen for dropping leaflets and that two German airmen had been shot for doing so. The British Government issued a denial of the latter statement.² However, on the 11 March the Prisoners of War Department announced that information had been received that the two officers would be released from imprisonment and returned to their camps.³ It consequently became unnecessary to take the reprisal action which the British Government had contemplated. The firm stand which had been taken had been as effective as the reprisals which Germany actually carried out in 1915 in order to establish the right of her submarine crews to the privileges of prisoners of war. The two cases are a lesson of the unhappy necessity for retaining the right to inflict reprisals in extreme cases.

Dr. Hazeltine's view of the case.—Dr. H. D. Hazeltine, referring to this case, stated in a lecture at University College London, on 11 March, 1918,⁴ that "in the absence of any explanations from the German authorities it is impossible to see any legal justification for the penal imprisonment of the airmen for a long term of years," and he agreed with the view of the British Government that their act did not constitute an offence against international law. He then went on to describe the German measures as a "return to medieval practices," prisoners of war being entitled to humane treatment. Perhaps his remarks upon this last point were stated a little too absolutely; it does not appear to be contrary to international law to take reprisals against prisoners of war, provided always that the reprisals are justified *in se*, that is, that the enemy has himself been guilty of some violation of the laws of war and has refused redress or discontinuance.

¹ See *The Times*, 16 February, 1918.

² See the *Daily Mail*, 7 March, 1918.

³ See *The Times*, 12 March, 1918.

⁴ See *Flight*, 28 March, 1918.

The condemnation not justified.—In the case in point, however, the two officers had been guilty of no offence. The dropping of leaflets cannot, in itself, be said to have been contrary to the laws of war. There was, indeed, some popular misconception upon the point. One finds an experienced war correspondent referring to the distribution by German airmen of manifestos addressed to our Indian troops in France in the winter of 1914-15: "Two German airmen who were brought down in the lines of the Indians one day were found to have a large stock of these manifestos in their machine with them. The prisoners turned livid when the discovery was made, for, under military law, I believe, it rendered them liable to be shot."¹ But such an opinion would not be supported by jurists,² and, as already stated, the Germans had themselves resorted to the practice on an extensive scale.³ The sole ground upon which the punishment of the officers could conceivably have been justified would have been that the leaflets were designed to excite civil commotion in Germany and to inspire revolt. As already stated, some doubt existed, in the minds at least of jurists, as to the legality of incitements to revolution. But the leaflets which Capt. Scholtz and Lieut. Wookey carried were not of the kind as to which doubt existed; they were really identical in tendency with the messages which were distributed again and again by German airmen to the Allies' troops and which amounted merely to an appeal to them to surrender. In any case, the practice of the war must be held to have answered definitely and in the negative the question whether incitements to political revolution are banned by the law and custom of war.

The lawfulness of political propaganda.—Incitements of this political kind were frequently dropped in the great war, and in the face of the practice then established it would not now lie in the mouth of any belligerent Power to complain that such action was contrary to international law. When Austria

¹ G. V. Williams, *With our Army in Flanders*, 1915, p. 292.

² See Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, pp. 527-8; Lacroix, *Le Domaine aérien et la Guerre*, pp. 201-8.

³ They continued it, moreover, down to the very end of the war. A leaflet dropped by German pilots in the Allied lines towards the end of the war is reproduced by Major C. J. Biddle (*The Way of the Eagle*, 1919, p. 294). It was in French on one side and in English on the other, and is headed "The German People offers Peace"; there follows an appeal for the cessation of hostilities on the basis of President Wilson's conditions. A veiled threat is to be seen in the words: "Who is to blame if the hitherto undestroyed towns and villages of France and Belgium sink in ashes?"

attempted to treat the practice as a crime, Great Britain and France, by their threat of reprisals, ranged themselves definitely on the side of the authorities who held that there was nothing illegal in incitements of a revolutionary tendency.¹ To treat such incitements as treason against the State damnified is a wholly unjustified extension of the idea of treason; enemy subjects cannot be guilty of treason unless they are resident within the jurisdiction of the State, including territory in its military occupation, and chargeable with conduct dangerous to the State's existence. When engaged in military operations, duly authorised, they are entitled to the privileges of combatants unless they can be shown to have committed some offence against the laws of war: which is something entirely different from an offence (however grave) against the law of the State attacked. To drop a pamphlet inciting to assassination would no doubt be an offence under the laws of war, assassination being forbidden by those laws. It is an entirely different matter when the act which the message seeks to accomplish is one not repugnant to natural law, not *malum in se*, but merely contrary to the law (because to the interests) of the State affected, or *malum prohibitum*. It cannot be held that to try to persuade a modern civilised nation to change its form of government is to incite to an act of the former category.

The rule proposed by the Commission of Jurists.—The Commission of Jurists who drew up a draft code of rules for air warfare at The Hague in February, 1923, included therein an article in the following terms:—

Art. 21.—The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare. Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

This Article, it will be observed, makes (properly) no distinction between military and political propaganda. It is, of course, implied that belligerent military aircraft alone are in question. If leaflet-dropping is a legitimate act of war—and if not, it is banned—it may be performed only by belligerent military aircraft, which alone are entitled to take any part in

¹ It is true that in the case in point the legality of such political incitement was not expressly affirmed; but the two Entente Powers must have been well aware that the leaflets which were being dropped in Austria contained appeals which, if they meant anything, went to the subversion of the Austro-Hungarian monarchy, and, knowing this, they defended the action of their airmen, in general terms.

hostilities. Enemy non-military aircraft, or neutral aircraft, engaging in propaganda in the enemy's interests, would be liable to be treated as unqualified combatants.

The reference to *dissemination* of propaganda in the Article would include distribution of news, etc., by radio or by sky-writing as well as by leaflets.

CHAPTER XIV.

ENEMY CASUALTIES.

The war law regarding the treatment of enemy casualties.—

The enemy "casualties" (*personnel* killed, wounded, captured, or missing) with whose treatment or disposal a belligerent is concerned are enemy dead within his lines and prisoners of war, including sick and wounded, in his hands. (Sick and wounded are prisoners of war, though there is a widespread popular impression that they are not.¹) Certain definite responsibilities rest upon him in regard to the treatment and disposal of such casualties. They are responsibilities arising from the general duty of a belligerent, under international law, to treat with humanity enemy *personnel* who are no longer in a position to offer active resistance and to protect the enemy dead in his lines from pillage, mutilation, and disrespect. Such a general duty has long been recognised as incumbent upon the commanders of civilised forces in war. It existed before, and was not created by, the three great international conventions in which formal expression was given to rules already, for the most part, observed. These international conventions are:—

The Geneva Convention, 1906, for the amelioration of the condition of the wounded and sick in armies in the field (replacing the earlier Geneva Convention, 1864).

The Hague Convention, 1907, for the adaptation of the principles of the Geneva Convention to maritime warfare.

The Hague Convention, 1907, concerning the laws and customs of war on land.²

¹ "The wounded and sick of an army who fall into the hands of the enemy are prisoners of war."—Art. 2, Geneva Convention, 1906.

² The following Great Powers have ratified all three Conventions: France, Germany, Austria-Hungary, Russia, Japan, United States. Great Britain and Italy have ratified the Geneva Convention, 1906, and Great Britain has ratified the Hague Convention on the laws of war on land. Great Britain signed, but has not ratified, the Hague Convention for the adaptation of the Geneva Convention to maritime war; Italy also signed, but has not ratified, the same Convention and also that relating to the laws of land warfare.

The Land Warfare Regulations attached to the last of these three Conventions contain provisions in regard to the treatment of prisoners of war. There is no Convention dealing with the treatment of prisoners in naval war, but a "*Voew*" of the Hague Conference of 1907 recorded the desire of the Powers represented that "the Powers may apply, as far as possible, to war by sea the principles of the Convention relative to the laws and customs of war on land."

The applicability of the Conventions.—Although the three Conventions referred to are expressed to be operative only in wars in which contracting Powers are alone engaged, the principles which they embody must be regarded as applicable also in wars in which non-signatories are involved. Strictly, the terms of the Conventions were not in force in the great war, in which some of the belligerents were not contracting parties, yet it was generally assumed that they did, in fact, apply and complaints and justifications of alleged breaches were made on that assumption. It must also be held that the same principles, modified to suit the newer developments, apply to air as to land or sea forces. It is obvious that such forces must be governed by some kind of rules in a matter which is, at bottom, simply one of humanity and moderation in warfare, and in the absence of special rules, or agreed modifications of the older rules, it is necessary and, indeed, imperative to regard the existing rules as binding on air forces.

The Geneva Convention in land and naval war.—The Geneva Convention and the Hague Convention applying its principles to naval war constitute between them the great charter establishing the rights, privileges, and immunities of the combatant victims of belligerent action. They impose upon belligerents the obligation to search for the dead and wounded after an engagement, on land or sea, to protect those found from maltreatment, to identify so far as possible the dead before burial (or cremation), to notify the enemy of his dead and wounded, to forward their identification marks and personal belongings, to spare the enemy's hospitals and the "sick bays" of his warships in battle, to exempt the enemy's hospital staffs and chaplains, as well as his mobile medical units on land and his hospital ships at sea, from the war right of capture.

The war rights of prisoners.—The corresponding charter of the rights of prisoners of war is contained in the Land Warfare Regulations annexed to the Hague Convention of

1907. These Regulations provide that prisoners shall be humanely treated, that their personal belongings (except arms, horses, and military papers) remain their property, that they must be treated as regards rations, quarters, and clothing on the same footing as their captor's troops, that they shall have liberty of worship, that officers shall receive the same pay as their captor's officers, rank for rank (such pay to be recovered from their own Government), that rank and file prisoners may, but officers may not, be put to compulsory labour, that such labour shall not be excessive and shall have no connection with the operations of the war, that it shall be paid for (subject to deduction of cost of maintenance), that if prisoners die they shall be buried in the same manner as their captor's troops and with due regard to rank. Detailed provision is made for the establishment of "Bureaux of Information" and for the facilitating of relief work for prisoners.

The treatment of dead and wounded enemy personnel.—

The conditions in which air fighting largely takes place make it possible to observe, in regard to enemy air casualties, one requirement of the Geneva Convention very often impossible of fulfilment in other forms of fighting. The search for the wounded and dead after a modern engagement, at any rate where conditions such as those prevailing on the western front in 1914-18 exist, is often out of the question. Air combat, however, is fought in circumstances in which it is normally possible at once to ensure that a wounded combatant is tended or the body of a dead one secured and reverently treated. It does, indeed, occasionally happen that a pilot is shot down in a zone of continuing land operations where immediate recovery of his body is not practicable. This happened in the case of Guynemer. When killed in an air fight (in September, 1917), he fell at a spot, near Poelcapelle, which was under heavy fire and unapproachable, except for a very brief space after his fall, when a surgeon was able to examine his body. The Berlin Foreign Office, in reply to an inquiry by the Spanish Ambassador, stated that in these circumstances his body could not be found and removed, and added: "The German airmen express their regret at having been unable to render the last honours to a valiant enemy."¹ In a few other cases, too, it proved impossible to protect the body of a fallen pilot from the maltreatment which was unfortunately

¹ H. Bordeaux, *Guynemer, Knight of the Air*, Eng. trans., 1918, pp. 218-19.

sometimes the fate of the dead of other arms.¹ It is also true that airmen who crashed in the enemy's lines were sometimes the victims of that individual savagery which occasionally breaks out, in spite of all precautions, in times of bitter fighting.² But such cases were altogether exceptional. In general an exceedingly high standard of conduct was set by the flying services on both sides in the great war in regard to the treatment of enemy casualties.

The treatment of disabled enemy airmen.—It is true that in the prisoners' camp in Germany, and more especially in Turkey, the *personnel* of the Allies' flying services, in common with their other *personnel*, were often subjected to great and avoidable hardships. There, the captured airmen were but part of an unfortunate band of captives whose treatment was controlled not by the air service but by the general military authorities of the captor Government. So far as the air service *personnel* were responsible for the observance of the duties imposed by the Geneva Convention, they did all and more than all that could be demanded under the letter of that Convention. Wounded or injured airmen were treated with humanity and consideration when brought down in the enemy's lines, and the victor in an air combat was often at pains to show respect to his vanquished adversary by personal courtesies. Boelcke tells how he went to visit an English observer, brought down by him, in hospital, and gave him English books and photographs of his machine.³ Immelmann also paid a visit to an English airman in hospital.⁴ Von Tutschek records the following instance of considerate treatment of two English airmen whom he had shot down: "On the way back I visited the two Englishmen, who were both still living. Had a long talk with the flight-leader, a really splendid young English captain, shot in the throat and body. He made me promise to visit him in England after the war, and was very grateful when I undertook to throw a card in his own writing, for his mother, over the

¹ The body of J. R. McConnell was found to have been stripped when the French cavalry reached the spot where he fell (E. C. Parsons, *L'Histoire de l'Escadrille La Fayette*, in *La Guerre aérienne*, 17 October, 1918, p. 786). The body of Sous-lieut. Xambo was also despoiled but was buried by the French inhabitants of the place where he fell—near Villeneuve-en-Fère—on 3 June, 1918 (*La Vie aérienne*, 20 February, 1919, p. 125).

² Thus the American pilot, Lieut. S. P. Marshall, 20th Aero Squadron, is stated to have been deliberately shot by a German infantry captain as he lay, badly injured, propped against his aeroplane, after crashing in the German lines on 5 November, 1918 (Hall and Nordhoff, *New England Aviators*, 1919, i. 150).

³ Boelcke, *Feldberichte*, 1916, p. 55.

⁴ Immelmann, *Meine Kampfzüge*, 1917, pp. 104-5; see also pp. 98-9.

English lines. Unfortunately he died of his wounds a fortnight after. The machine-gun had been worked by a sergeant, who eyed me with a venomous look and raved incessantly over his own bad shooting. He had some ribs broken. . . . It was a strange coincidence that I said to the English captain in jest, to console him, that if I were wounded I should come to the same hospital and bear him company. That very evening I lay beside him, shot through the shoulder!"¹

Buddecke also tells how he visited in hospital at St. Quentin an English observer, Capt. Stott, whose machine he had brought down.² Flight Sub-Lieut. G. K. Blandy has placed it on record that the German who shot him down brought him gifts of papers, cigarettes, etc.³ When Prince Friedrich Karl of Prussia was brought down in April, 1917, he was treated, according to his own story, with great kindness and he expressed his gratitude to his captors before he died.⁴ Another German officer who was forced down, wounded, in the French lines, has testified to the consideration and respect with which he was treated.⁵

An American citizen who, while serving as an officer in the British Flying Corps, was wounded and shot down in Germany, has placed it upon record that, while in hospital, he was visited by German flying officers and treated with great consideration. "They told me of the man I had brought down. They said he was a Bavarian and a fairly good pilot. They gave me his hat as a souvenir and complimented me upon the fight I had put up."⁶

Sometimes the courtesies offered to a captured flying officer were bread cast upon the waters. When Major A. J. Evans was captured in Palestine on 19 March, 1918, he was very courteously treated by Hauptmann Franz Walz and the other German airmen at El Afuleh. Subsequently Major Evans escaped and on reaching Egypt found in the Prisoners' Camp between Cairo and Alexandria Hauptmann Walz and some other flying officers who had been his hosts eight months before. He was able, in turn, to show friendliness to the foes whom the fortune of war had transformed from captors into captives. "They seemed a particularly nice lot of fellows," says Major

¹ Tutschek, *Stürme und Luftsiege*, 1918, pp. 158-9.

² Buddecke, *El Schahin*, 1918, p. 50.

³ See Lieut. Blandy's letter in *The Aeroplane*, 14 March, 1917.

⁴ See *The Times*, 10 May, 1917.

⁵ Frei, *Unser Fliegerheld Immelmann*, pp. 56-7.

⁶ Lieut. P. O'Brien, *Outwitting the Hun*, 1918, p. 34.

Evans. "I count Hauptmann Walz among the many nice fellows whom I met in this war."¹

An English pilot who was brought down in the German lines on 3 July, 1916, wrote at the time: "A number of Germans soon came up; they lifted me carefully out. As long as I live I will bless them for their gentleness. . . . A Red Cross doctor gave first aid and after some time I was removed by motor ambulance to a field hospital."²

The high standard of 1914-18.—Perhaps sometimes there was some propagandist motive behind the reports of good treatment of wounded enemy airmen, as undoubtedly there often was, for the contrary purpose, behind the reports of the ill-treatment of prisoners as a whole. There is something theatrical and displeasing in the story that Immelmann once knelt down and said a prayer over the body of an English pilot whom he had killed.³ But it is beyond question that it was the practice of Immelmann in particular and of the German airmen as a whole to treat with chivalry and consideration those enemy airmen, especially when wounded, whom the fortune of war delivered into their hands.⁴ That the Allies on their side behaved with no less chivalry and humanity to the German airmen in the reversed circumstances is equally certain.⁵

The burial of dead enemy airmen.—There is no substantive provision in the Geneva Convention that the enemy's dead shall be buried or cremated, but a specific duty is imposed upon belligerents to arrange for a careful examination of all bodies *before* they are buried or cremated. In practice it is often impossible in modern war to collect and bury those who have fallen in *terrain* the possession of which is disputed, and it is a sad feature of every major engagement that after it there must always be a long list of those whose fate is unknown and whose bodies are perhaps never found. Here, again, the circumstances of air warfare allowed a high standard to be established. By no arm of the service were the dead treated with such reverent respect as by the air forces on both sides.

¹ A. J. Evans, *The Escaping Club*, 1921, pp. 215, 265-6. Major Evans had given his parole not to try to escape while in the German Flying Officers' mess at El Afuleh; when he escaped months later it was alleged that he had broken his parole, and one of the services which Hauptmann Walz was able to do for him was to deny in the strongest terms that allegation.

² See the officer's letter in *The Aeroplane*, 6 September, 1916.

³ See Frei, *Unser Fliegerheld Immelmann*, p. 28.

⁴ Frei, *op. cit.*, pp. 20-1.

⁵ See Frei, *op. cit.*, pp. 56-7, for a statement by a German pilot as regards the kindness with which he was tended when wounded and captured.

It was customary in all services to bury enemy airmen with military honours.¹ Sometimes a volley was fired over the grave;² where this was not done, buglers sounded a blast in the dead pilot's honour.³ In some cases one or more aircraft of the forces burying the enemy airman circled overhead and dipped in a salute above his grave.⁴

The grave itself was always marked in some way, often by the erection of the dead airman's propeller over it, and usually by an inscription giving the name and date of death. On at least one occasion, particulars of a dead pilot's name were requested for this purpose. When 2nd Lieut. P. D. Montague was killed on 29 October, 1917, on the Salonika front, a message written in Bulgarian was dropped on Janes aerodrome by a hostile aircraft. Translated it ran:—

"On the 29th of October, 1917, one of your comrades met with a hero's death in an air fight. He was buried with due honours, and a memorial stone has been put up over his grave, but without an inscription, as his name is not known to us. In order that we may make good this deficiency, kindly inform us as to his name and the date and place of his birth. The reply should be addressed to 'Bulgarian Airmen.'"⁵

¹ Specific references to the burial of enemy airmen with military honours will be found in the letter of a German chaplain quoted in *The Aeroplane*, 2 August, 1916 (burial of Lieut. Savage, R.F.C., killed in air combat over German lines, 18 June, 1916); *Pall Mall Gazette*, 16 February, 1916 (burial of 2nd Lieut. Robert Barton); *The Times*, 30 March, 1917, article by J. P. Whitaker (burial of Lieuts. Gray and Wilkinson); *La Guerre aérienne*, 14 June, 1917 (burial of Capt. Doumer); Boelcke, *Feldberichte*, p. 40 (funeral of two French airmen); *Diario della Guerra d'Italia*, i. 804 (report of burial of Italian airman by the Austrians *con gli onori militari*); *The Times*, 4 July, 1917 (burial by Germans of Russian airmen with military honours); Mortane, *Histoire illustrée*, ii. 49 (burial by Bulgarians "with respect due to rank" of the body of a French officer-pilot recovered from the sea); *La Guerre aérienne*, 9 August, 1917, pp. 623-4 (burial of Lieut. Lautiron and another French officer by the Germans with military honours); Wedgwood Benn, *In the Side Shows*, 1919, p. 240 (facsimile of message dropped by Austrian airman stating that four British flying officers had been *mit militärischen Ehren begraben* in the Austrian lines).

² When Lieut. Savage was buried a firing party is stated to have been present (letter from German chaplain quoted in *The Aeroplane*, 2 August, 1916); at Richthofen's funeral a volley was fired. See British official photograph in *Flight*, 2 May, 1918, of the actual firing of the volley over his grave.

³ The "Last Post" was sounded over the grave of two German airmen brought down in the Thames estuary on 5 June, 1917 (*Weekly Despatch*, 10 June, 1917), and also at the funeral of the crew of the German airship brought down on 24 September, 1916 (*The Aeroplane*, 4 October, 1916).

⁴ Such a salute was paid at the funerals of the crew of the "Cuffley" airship on 6 September, 1916 (*The Aeroplane*, 13 September, 1916) and of the crew of the "Potter's Bar" airship on 5 October, 1916 (*ibid.* 11 October, 1916; also at the burial by the German air officers of Lieut. Edwards in Mesopotamia (J. E. Tennant, *In the Clouds above Baghdad*, p. 221), and of Richthofen by the British flying service (Hamilton Fyfe, in *Daily Mail*, 24 April, 1918).

⁵ H. A. Jones, *Over the Balkans and South Russia*, 1923, pp. 87-8. The inscription on the grave sometimes testified to the gallantry of the fallen airmen. Thus when Sergeant Gentil was buried by the Germans near Chauny in August,

The dropping of wreaths.—The grave was in many cases heaped with beautiful wreaths sent by the officers of the same forces, in honour of their dead foe,¹ and even when the burial took place within the airman's own lines a wreath was sometimes dropped by the enemy airmen in token of respect for a gallant opponent.² A variant of this practice is to be found in a pleasing incident recorded in regard to the burial of a French airman who was shot down in the Argonne in August, 1915. A message was dropped in the French lines giving news of his death and particulars of his place of burial behind the German lines, and a French airman thereupon flew to the place named and dropped a wreath there.³

When the German "Ace," Lieut. von Eschwege, was killed while attacking a "dummy" observation balloon on the Salonika front on 21 November, 1917,⁴ the British air force dropped a message in the enemy lines giving news of his death and on the following day a German machine dropped at Monhui (Macedonia) a wreath, a flag, and a letter addressed to the R.F.C. Part of the message was as follows:—

1918, his grave bore the inscription: "To the heroic French aviator Gentil, gloriously fallen after a determined struggle" (*La Guerre aérienne*, 30 January, 1919, p. 71).

¹ See the photographs of the wreath-covered graves of British airmen buried at Ostend in Bacon's *Dover Patrol*, pp. 363-4, and of Richthofen in *La Guerre aérienne*, 3 October, 1918, p. 750. When Lieut. Lautiron and another French officer were buried at Luxemburg in February, 1917, many wreaths were placed on their graves (*La Guerre aérienne*, 9 August, 1917). Boelcke states that a bouquet of red, white, and blue flowers was placed on the grave of the two first airmen whom he brought down (*Feldberichte*, p. 40). A photograph of the wreath-covered grave of Lieut. Gauthier and his pilot is given in *La Guerre aérienne*, 4 July, 1918.

² When Boelcke was killed in a collision on 28 October, 1916, and buried in his own lines, wreaths were dropped by both British and French airmen near his place of burial. See B. A. Molter, *Knights of the Air*, 1918, pp. 21-4, where it is stated that "all enemy airmen receive this distinguished consideration." The wreath from the R.F.C. is stated to have been dropped by Lieut. T. Seaman Green (who was himself killed in February, 1917) flying at a height of 17,000 feet. See *Flight*, 8 March, 1917. A British pilot dropped a beautiful wreath near where Immelmann was being buried, in July, 1916. See the letter from an officer in *The Times*, 14 July, 1916. The Germans dropped a wreath in honour of the French pilot Pégoud when he was shot down by Kandulsky. See photograph of the wreath in Bonnefon, *Le Premier 'As' Pégoud*, 1918, p. 128; the wreath was inscribed: "Den im Kampfe für sein Vaterland gefallenen Flieger Pégoud ehrt der Gegner." Possibly a second wreath also was dropped, for in Mahlke, *Hoch in den Lüften*, 1916, p. 112, the inscription is stated to have been in French: "A Pégoud mort en héros! Son adversaire" ("Dem als Held gefallenen Pégoud. Sein Gegner"). According to M. Mortane (*La Guerre aérienne*, 7 November, 1918, p. 835) the wreath was dropped by Kandulsky himself. See also E. A. Powell, *Vive la France*, p. 213.

³ *The Aeroplane*, 25 August, 1915, quoting a German officer's letter, from the *Frankfurter Zeitung*.

⁴ See p. 151, *supra*.

"We thank you sincerely for your information regarding our comrade Lieut. von Eschwege, and request you to permit the accompanying wreath and flag to be placed on his last resting-place.

"DEUTSCHES FLIEGERKOMMANDO." ¹

The protests made against the honours paid to the enemy's dead.—The tribute paid to fallen German airmen aroused the indignation of certain ardent souls in this country. When the crew of the airship L. 21, brought down at Cuffley on 3 September, 1916, were buried with military honours, many protests were made in the press, and one writer declared that it would have been equally logical to have accorded a military funeral to Jack-the-Ripper, Crippen, or Charlie Peace.² Again, when Manfred von Richthofen was buried "with full military honours" (Sir Douglas Haig's dispatch of 22 April, 1918), a lady bearing a historic name wrote to protest against "the awful insult we have suffered by seeing in the daily papers pictures of glorious spring flowers made into wreaths being held over the grave of von Richthofen, a low, murderous Boche."³ This letter was promptly answered by other correspondents who pointed out that the officers of the R.F.C. were the best judges in such a matter, and that, in their opinion, von Richthofen was a gallant man, a sportsman, and a clean fighter.⁴

The notification of enemy casualties.—That which seemed to some people to be a quite unnecessary ceremoniousness and almost sentimentality was only the flying men's courtly fashion of performing an obligation in any case imposed by the Hague Rules—the burying of captured enemy *personnel* with due regard to their rank. Another obligation arising under those Rules and the Geneva Convention,⁵ that of the mutual interchange by the belligerents of particulars of enemy casualties

¹ H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 94.

² See *Weekly Dispatch*, 10 September, 1916. For description of the reverent burial by the R.F.C. of the bodies of the airship crews brought down near London in September-October, 1916, see *The Aeroplane*, 13 September, 1916, 4 October, 1916, and 11 October, 1916; also Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 383, for a photograph of the coffin of a member of one of the crews being borne to the grave on the shoulders of R.F.C. officers.

³ See the letter in the *Daily Mail*, 4 May, 1918.

⁴ See *Daily Mail*, 7 May, 1918. Impressive descriptions of the burial of Richthofen were given by Mr. Philip Gibbs in the *Daily Telegraph*, 23 April, 1918, and by Mr. Hamilton Fyfe in the *Daily Mail*, 24 April, 1918. The former says that the great airman was buried "according to the custom of our Air Service and of that chivalry which exists between the flying men on each side." "Overhead," says Mr. Hamilton Fyfe, "there waved a flight of aeroplanes paying their tribute of respect."

⁵ The obligation arises in regard to the dead under the Geneva Convention, in regard to the sick and wounded (these being also prisoners of war) under that

dealt with by each and of the transmission of identification marks and personal belongings of the enemy dead to their own country, was performed by the flying services in characteristic fashion. They sent the notification, and sometimes the dead man's valuables, by air. The first case of the kind appears to have occurred on 11 September, 1914, when a German aircraft dropped in the French lines a message telling of the capture of a French pilot.¹ In December, 1914, another German aircraft dropped in Dunkirk a message giving news of a French airman who had been captured and adding the good wishes of the German airmen for a happy Christmas for the French airmen.² The practice of dropping messages had become common by the spring of 1915. On 2 May, 1915, Mr. Beach Thomas reported that "on several occasions of late German airmen have dropped letters giving news—in some cases delivering autograph letters—of British prisoners in Germany. In every instance our airmen have flown over the German lines to drop a letter of thanks and of acknowledgment."³

The Australian official historian refers more than once to this practice of notifying the enemy air forces of their casualties. Thus, on 8 March, 1917, a Fokker flew over El Arish aerodrome, then in British hands, and dropped a message with two letters from British airmen who had been captured a few days before and one addressed to a German prisoner. The Fokker was attacked by mistake and the British squadron dispatched two machines to Beersheba (in Turkish hands) to thank the Germans for their message and to apologise for the attack on the message-carrier. "This method of correspondence between opposing airmen," adds Mr. Cutlack, "was a feature of war in the air on all fronts."⁴

Sometimes the note was dropped with extraordinary dispatch. "On one occasion, during May, 1917, a message was dropped on Douai aerodrome [a German aerodrome in France], two hours after his capture, announcing the safety

Convention and also under the Land Warfare Rules, and in regard to other prisoners of war under the Land Warfare Rules.

¹ Mortane, *Les Vols émouvants de la Guerre*, 1917, p. 20. It is not clear whether this was the same case as that mentioned by M. Mortane in *La Guerre aérienne*, 7 November, 1918, p. 835, where he states that when Lieut. Faurit was captured in Châlons Camp in September, 1914, a German aircraft dropped a message to say that he was a prisoner and in good health.

² *Times* correspondent at Dunkirk, *The Times*, 21 December, 1914.

³ *Daily Mail*, 3 May, 1915. See also B. A. Molter, *Knights of the Air*, p. 27.

⁴ F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 58.

of a German scout pilot whom he had driven down near St. Pol." ¹

Sometimes, no doubt, the messages thus sent were lost. Lieut. Schäfer states that when, at Loos, the Germans had shot down a number of English airmen, a list was made of those who were killed; the rest, taken prisoners, were allowed to write to their parents. All the documents were then done up in a Field-post packet, which was weighted with bits of coal ("to show them over there that we are still far removed from a coal famine") and tied up with a piece of Iron Cross ribbon. This was dropped over the English lines but it was not known whether it was ever found. No acknowledgment was sent.² The identification discs of the British troops killed at the first battle of Gaza and a list of those captured were dropped in the British lines by a German aeroplane shortly after the engagement.³ Mr. Beach Thomas, referring to the death of Voss, killed in an air combat over the British lines, says: "The usual courtesies of the air have been observed in telling the Germans of the end of their skilled and courageous duellist." ⁴

Major C. J. Biddle, of the American aviation service, referring to a two-seater which he shot down in August, 1918, says: "I have got a little parachute to which I am attaching a note giving the names of the men (the German pilot and observer) and a short statement of what happened to them, and this I shall drop over the German lines the first clear day. . . . The Hun aviation in this sector is very good about doing the same thing and sending us information about any of our men who are lost, so the least we can do is to reciprocate." ⁵ The practice was not, however, invariable. The death of Major L. G. Hawker, V.C., D.S.O., was first made known to the British troops by a German soldier who shouted from the front-line trench, shortly after Major Hawker was reported as missing (November, 1916), that a flying officer wearing the V.C. and D.S.O. ribbons had died of wounds in hospital at Cambrai a few days before.⁶ The French "Ace" Dorme refused to drop any message of the kind, but he was always a bitter fighter—a true son of Lorraine. In a letter of March,

¹ Group-Capt. A. J. L. Scott, *History of Sixty Squadron*, 1920, p. 88.

² Schäfer, *Vom Jäger zum Flieger*, 1918, p. 97.

³ Capt. O. Teichman, *The Diary of a Yeomanry M.O.*, 1921, p. 131.

⁴ *Daily Mail*, 3 October, 1917.

⁵ C. J. Biddle, *The Way of the Eagle*, 1919, p. 243.

⁶ *The Aeroplane*, 11 July, 1917.

1917, he says: "My prisoner [whom he had brought down a few days before] has asked me to drop a paper message in his country to say that he has been only wounded, but he may 'burst' (*crever*) and his parents may remain without news. French parents suffer enough through them. I will keep his paper as a souvenir."¹ Such an attitude was, however, quite exceptional. The practice of informing the enemy of the fate of their flying men prevailed not only on the French, but also on the other fronts.² Sometimes the note was more than a bare statement of fact and expressed admiration for the gallant conduct of the airman whose death was announced. In August, 1915, a German aeroplane dropped in the French lines an oriflamme with a note: "De Lacquer and the pilot fought bravely. They are buried at Harbouey, near Blamont."³ When 2nd Lieut. John Parker, R. Lancaster Regt., was killed on the German side of the line in an air combat, a message telling of his death was dropped by a German aircraft, and it added that the Germans wished to express their admiration of the English officer's extreme gallantry.⁴

On 20 March, 1917, an Austrian Albatross, with two occupants, was brought down in the Italian lines by Lieut. Olivari, and one of the Austrians, Lieut. d'Heintochl, was killed. Next evening, an Austrian aeroplane dropped a note addressed to Heintochl by his wife, who believed that he was alive and a prisoner. An Italian airman dropped a reply, informing her that her husband had died a gallant death and had been buried with military honours.⁵

Examples of the messages dropped.—An example of the kind of note dropped may be quoted. When 2nd Lieut. F. N. Grimwade, R.F.C., was shot down in the German lines on 4 April, 1916, the following message was dropped from a German aeroplane in the British lines:—

"4.4.16. To the Royal Flying Corps, Bailleul. Mr. Grimwade and Mr. Frost have fallen wounded into honourable imprisonment. Mr. Frost has a flesh wound in the thigh, Mr. Grimwade a wound in the thigh

¹ Quoted in *La Guerre aérienne*, 22 May, 1918, p. 455.

² See a case on the Russo-Austrian front quoted by the Danish correspondent of *The Aeroplane*, 20 April, 1915; Wedgwood Benn, *In the Side Shows*, 1919, pp. 246-7, for cases on the Austro-Italian front; H. A. Jones, *Over the Balkans and South Russia*, 1923, pp. 30, 45, for cases on the Salonika front.

³ See *Flight*, 27 August, 1915.

⁴ Letter from an R.F.C. officer to Lieut. Parker's parents quoted in *The Aeroplane*, 11 August, 1915.

⁵ *La Guerre aérienne*, 10 May, 1917, p. 410.

bone (both bullet wounds). Under the circumstances both are doing well and wish to be remembered to their comrades and relatives."¹

Another message, one dropped by German aircraft, on the Salonika front after the death of Lieut. S. J. M. White and H. Matthews in an air combat in January, 1917, is quoted by Mr. H. A. Jones. It will be seen that the English is quaint, particularly in the second paragraph, where the word "blessed" means, of course, wounded (*blessé*); but the spirit of the note is fine and chivalrous:—

"THE ROYAL FLYING CORPS.—The German aviators are very sorry to inform you of the death of the two English aviators which were killed on the 15th January, 10.30 A.M., after a fight with our aeroplanes. The English aviators had been fighting very bravely, but their aeroplane dropped after about five minutes fight and "skilled." They died as heroes, and have all our respects. Their bodies will be buried with all military honours.

"We are informing you also of your Lieut. Pocock having been made a prisoner by the troops without being blessed.

"We are obliged of your having informed us of the four German aviators which have been made your prisoners.

"THE GERMAN FLYING CORPS."²

When the French Capt. Doumer was killed in air combat on 26 April, 1917, the message telling of his fate enclosed two photographs of his grave, one being intended for his wife.³ A similar instance is recorded by Capt. Wedgwood Benn. He states that when one of our two-seaters was brought down near Levico, the Austrian airmen dropped a note in which they said: "These two officers met their death in aerial combat and are buried in our cemetery of heroes at Levico." With this message were enclosed two fine photographs, one showing the funeral procession headed by a priest in robes carrying a crucifix, the other the coffin being lowered into the grave with some of the leading Austrian flying men paraded to do it honour.⁴ Sometimes a parcel containing some of the dead airman's personal valuables was dropped at the same time,⁵ but usually

¹ Quoted in *Flight*, 13 April, 1916. See also an example of a message and letter dropped in Farré, *Sky Fighters of France*, Eng. trans., 1919, pp. 19-20.

² H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 33.

³ Letter quoted in *La Guerre aérienne*, 14 June, 1917, p. 485.

⁴ Wedgwood Benn, *In the Side Shows*, 1919, p. 247. The same writer reproduces (at p. 257) a photograph dropped by the Austrian Flying Corps, showing the coffin of a British airman being placed in an ambulance for burial, with a priest waiting at the head of the procession, and (at p. 272) another showing the coffin being lowered into the grave.

⁵ See "Flight," *The Flying Yankee*, 1918, p. 124. Another case in which an R.F.C. pilot's personal belongings were dropped in the British lines by a German aircraft in the summer of 1916 was reported in the *Star*, 7 January, 1918.

such valuables appear to have been transmitted later by post.¹

Removal of bodies for re-burial.—It need hardly be said that no obligation is imposed by the Geneva Convention or the Hague Rules upon a belligerent to hand over the body of a dead airman (or other combatant) to his own forces for burial. In a case of the kind which arose in the great war, that of Prince Friedrich Karl of Prussia, who died of wounds in the British lines, unofficial inquiry was made by a "neutral sovereign" whether his body could be sent to Germany. "The reply was given to the effect that it was impossible at present, but that, so far as we are concerned, there would be no objection to this being done on the conclusion of hostilities."²

Exchange of wounded and sick.—Under the terms of the Geneva Convention (Art. 2) belligerents are free to arrange with one another for the mutual restoration of the wounded left on the field or for the repatriation (or deposit with a neutral State for internment) of any wounded and sick whom they do not wish to retain. Usually the *personnel* handed over are those unfit for further service, and it is often a matter of difficulty to say what precise degree of incapacity makes an officer or man thus unfit. Some famous pilots were undoubtedly "unfit" according to the standard of other arms of the service. Guynemer was refused admission to the French army when he first tried to enlist; he was frail and delicate always and never in really good health.³ Boelcke was asthmatic.⁴ Nungesser was so often wounded that it was said of him that the only part of him left intact was his heart.⁵ He insisted upon continuing to fly in the face of a medical board which wished to

¹ It was thus apparently that Major Albert Ball's father received his battered cigarette case and other personal property. See statement in the *Weekly Dispatch*, 24 February, 1918. A message announcing his death was dropped by a German aircraft but not, apparently, until about three weeks after it (Briscoe and Stannard, *Capt. Ball, V.C.*, 1918, pp. 289-91). The German authorities may have considered it desirable for military reasons not to announce his fate earlier; this temporary withholding of the notification would have been quite legitimate. The British Admiralty kept secret for nearly a month the fate of the German raider "Greif," sunk in the North Sea on 29 February, 1916, and during that time the 120 members of the crew were not allowed to communicate with the outside world (*The Times*, 27 March, 1916).

² Mr. Bonar Law in the House of Commons, 26 April, 1917.

³ See H. Bordeaux, *Guynemer, Knight of the Air*, Eng. trans., 1918, p. 52; Mortane, *Les Vols émouvants de la Guerre*, 1917, p. 74; Nungesser, *As des As*, in *La Guerre aérienne*, 18 October, 1917, p. 773; Hall and Nordhoff, *Lafayette Flying Corps*, ii. 235; Mortane, *Guynemer, the Ace of Aces*, 1918, p. 246; D. Vincent, *La Bataille de l'Air*, 1918, pp. 18-19.

⁴ *La Guerre aérienne*, 3 October, 1918, p. 747.

⁵ René Fonck, *Mes Combats*, 1920, p. 155.

invalid him.¹ The famous French pilot Tarascon had lost a leg in a flying accident before the war and had the unique experience of having his artificial leg "wounded" in an air combat and of being necessarily earth-bound while it was under repair!² Another French pilot, Du Marmier, continued to serve as such after losing a leg as the result of a shell-burst in the air.³ In the British service, there were also airmen who served with distinction in spite of the loss of a limb: Lord Lucas,⁴ for instance, Lieut. Sydney Carlin,⁵ and Lieut. F. Alberry.⁶ It is clear from these instances that a standard of unfitness which would probably be held to justify repatriation of a wounded prisoner belonging to the land forces may be inapplicable to the case of an airman.

The position of chaplains and priests.—Article 9 of the Geneva Convention exempts from capture not only "the *personnel* engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments," but also "the chaplains attached to armies" (*les aumôniers attachés aux armées*). The chaplains here referred to are those officially employed and graded as such. A priest or minister of religion who takes service, combatant or otherwise, in a belligerent force, is not entitled to any special privileges unless he is officially rated as, and borne on the establishment of, chaplains. (The same remark applies to civil doctors serving otherwise than as medical *personnel*.) One of the leading French "Aces" was a priest—the *Abbé* Bourjade—who destroyed 26 *Drachen* and two aeroplanes.⁷ Another priest, the *Abbé* Cordonnier, had five victories to his credit when he became "missing" in July, 1918.⁸ Naturally such pilots are to be regarded as in no wise differing from other combatant *personnel*.

Flying ambulances.—The mobile medical units (field ambulances) of an army and the hospital ships of a fleet are exempt

¹ Bordeaux, *Gwynemer, Knight of the Air*, 1918, p. 150.

² C. Lafon, *La France ailée en Guerre*, pp. 155, 156.

³ See *La Guerre aérienne*, 30 November, 1916, p. 41.

⁴ See M. Baring, *R.F.C.H.Q.*, 1920, pp. 194-6.

⁵ In the award of the D.F.C. to Lieut. Carlin, M.C., D.C.M., it is stated that "though handicapped by the loss of a leg, he is bold and skilful in attack and has destroyed four balloons and shot down two enemy machines" (*London Gazette*, 2 November, 1918).

⁶ Lieut. F. Alberry, D.C.M., No. 2 Squadron, Australian Flying Corps, "had lost a leg while serving in the infantry but was none the less a daring and successful pilot" (F. M. Cutlack, *The Australian Flying Corps*, 1923, p. 294).

⁷ See *La Guerre aérienne*, 26 December, 1918, p. 954.

⁸ *Ibid.*, *loc. cit.* The names of other airmen-priests are given also.

from capture. It is to be presumed that a like immunity will be granted to flying ambulances. It will be granted, however, only upon conditions analogous to those upon which the immunity of hospital ships depends: that is, that they must not be used for a military purpose, that they must not hamper the movements of the combatants, that during and after an engagement they act at their own risk and peril, that they are subject to control and liable to search, that they may be ordered off or given a certain course, that a commissioner may be put on board them, and that in certain circumstances they may be detained.¹ They will presumably be allowed to enter neutral jurisdiction, and to leave again, in connection with the evacuation of sick and wounded. Their position in this respect is more akin to that of the convoys of sick and wounded of belligerent armies to which a neutral Power may grant passage in land war, than to that of hospital ships. As is hereafter explained,² the rule of maritime war governing belligerent entry of neutral ports does not apply to aircraft, which are treated for this purpose in accordance with the principles applying to land forces. It is therefore to be anticipated that flying ambulances will be allowed (at the discretion of the neutral State concerned) to enter neutral jurisdiction in so far as mere passage through the neutral State's atmosphere, or possibly a brief halt to obtain supplies, is involved, but that if the sick and wounded are landed in neutral territory they will be subject to internment.³ It is possible that this rule in regard to internment will apply to belligerent *personnel* carried in the flying ambulances of the other belligerent into neutral jurisdiction even when a mere passage was intended.⁴ In other words, the neutral State will insist, when granting permission for entry, that any wounded and sick of the other belligerent shall be landed, instead of being carried through.

Transportation of sick and wounded by air.—Before the great war suggestions had been made, notably by M. René

¹ Art. 4, Hague Convention for the Adaptation of the Principles of the Geneva Convention to Maritime War, 1907.

² See chapter xx.

³ See Art. 14, Hague Convention on Neutrality in Land War, 1907.

⁴ This would be in conformity with the land warfare rule, under which a neutral Power is bound to remove, and intern, wounded and sick brought by one of the belligerents and belonging to the adverse party, into its jurisdiction. The wounded and sick of the Power whose convoy is concerned are subject to internment only if "committed to the care" of the neutral State, i.e. left in its territory for treatment.

Quinton and M. Julliot,¹ for the employment of sanitary aircraft in the service of armies in the field. The practical application of these suggestions was to be seen in the transportation on various occasions of the sick and wounded in ordinary fighting aircraft, especially during the operations in Serbia (see below), but there appears to have been no instance of the actual employment of a Red Cross flying ambulance, marked and recognised as such. The cases that occurred did, however, establish the practicability and advantages of rapid and successful conveyance in this way of wounded men for whom the necessary surgical aid could be obtained only at a place far distant from that in which they became casualties.²

The Serbian evacuation.—When the Serbian army was retreating before the Austrians in November, 1915, the French aircraft which were serving with the Serbians were used as ambulances to convey the most serious cases of sickness from Prizrene to Scutari in Albania, a distance of 180 kilometres. Five invalids were thus conveyed by air. A curious incident of this novel form of evacuation was that one man who started the journey dangerously ill with pneumonia arrived at Scutari completely cured. "Perhaps some day," says M. Mortane, "the aeroplane will become the approved remedy for pneumonia."³

The Rule proposed at The Hague.—The Rules for air warfare drawn up by the Commission of Jurists at The Hague in 1923 contain the following provision in regard to flying ambulances and the Geneva Convention :—

Art. 17.—The principles laid down in the Geneva Convention, 1906, and the Convention for the adaptation of the said Convention to Maritime War (No. X. of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

¹ See Julliot, *Les Aéronefs sanitaires*, in *Revue de Droit Int.*, 1917, pp. 509-22; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (44).

² Lacroix, *Le Domaine aérien et la Guerre*, pp. 216-17. A photograph of a French flying ambulance, bearing the Red Cross, may be seen in *Flying* for February, 1918, but it was apparently only an experimental one.

³ Mortane, *Histoire illustrée de la Guerre aérienne*, 1920, ii. 17. Since the great war aircraft have been successfully used in Mesopotamia for the evacuation of invalided personnel. See dispatch of the Air Officer Commanding, Iraq, published in *London Gazette*, 10 June, 1924.

The "usual distinguishing marks" will be those of the belligerent military aircraft of the State in whose service the flying ambulance is. The requirement of both the Red Cross emblem and the service mark is in conformity with the rule in regard to the hoisting of the Red Cross flag over military hospitals; that flag must always be accompanied by the national flag of the belligerent to whom the military hospital belongs, unless the hospital is, for the time, in the hands of the enemy, in which case only the Red Cross flag is flown.¹ Aircraft marks being irremovable, the last part of this provision would not be applicable to flying ambulances.

The bombing of Red Cross hospitals.—The question of the sparing of Red Cross and other hospitals in air bombardments is dealt with in an earlier chapter of this book² and need not be considered here. It would be possible to cite a number of cases in which, whether deliberately or accidentally, medical establishments which should have been protected under the Geneva Convention were bombed in the great war, but little profit is to be gained from such a recital. References to such cases will be found in other works.³

The treatment of prisoners of war.—It has already been stated that the principles of the Land Warfare Regulations in regard to the treatment of prisoners of war must be held to apply to captured air *personnel*. Once they are in the enemy's hands their lot differs in principle in no way from that of other prisoners, although it may be customary upon their immediate capture and while they are still in relations with the opposing air *personnel* to mitigate the coldly impersonal treatment which other captives often experience. It may be assumed that in the captor's prison camps, and generally, they are subject to the ordinary rules governing the treatment of prisoners of war, and here it is necessary to deal only with some questions in which the circumstances of air warfare have affected the practical application of those rules.

The private effects of prisoners.—The Land Warfare Regulations provide that the personal belongings of prisoners of war, except arms, horses, and military papers, remain their property. In practice they are also allowed to retain "military uniform, clothing and kit required for personal use, although

¹ Geneva Convention, 1906, Art. 21.

² See pp. 262-4.

³ See, for instance, Rolland, *Les Pratiques de la Guerre aérienne* in *Revue de Droit Int.*, 1916, p. 539; Hall and Nordhoff, *Lafayette Flying Corps*, ii. 79-81; Garner, *Int. Law and the World War*, i. pp. 500-2.

technically they may be the property of Government." ¹ The flying kit of a British officer, although public property, would presumably be treated as his property, like his own uniform. His field glasses, if his own property, would also remain his property, but would probably not be left in his actual possession, being kept for him until his release. (The same rule would apply to any considerable sum of money in his possession; the captor could legitimately withdraw it, as being likely to facilitate escape, and give the officer a receipt for the sum taken, with a view to refund on his release.) If, however, the field glasses or other articles of the kind (e.g. a compass) were public property, they would be confiscated.² So, too, would a revolver, even if private property, since it would come under the heading of "arms." "Arms" would cover ammunition.

Rations, quarters and clothing of prisoners.—The Land Warfare Regulations require prisoners of war to "be treated, as regards rations, quarters, and clothing, on the same footing as the troops of the Government which captured them." Another rule prescribes that officer-prisoners "shall receive the same rate of pay as officers of corresponding rank in the country in which they are detained; the amount shall be refunded by their own Government." Where, as sometimes happens, there is a difference of practice in the services of the captor State and that of the captured officers in regard to the issue of rations and uniform, which may be supplied free in the one but provided by the officers themselves in the other, the Rules give rise to some difficulty. The usual course appears, however, to be to charge officers for any rations and clothing issued to them, as a debit against the pay which they receive. This pay, it should be observed, is that prevailing in the captor's service. It may be entirely disproportionate to that in the captured officers' own service, and there is always the possibility that an officer of, say, the rank of Squadron-leader in the British service, whose emoluments, including all allowances, are about £800 to £900 a year, may find himself paid in captivity at the local rate for a Major (the corresponding rank) which may be only £300 or £400 a year. Any hardship on this score, can, however, be rectified by the officer's arranging to obtain remittances from his agents or bankers at home.

¹ Edmonds and Oppenheim, *Land Warfare*, § 69; *American Rules of Land Warfare*, § 55.

² But the officer would have a claim upon his own Government for eventual replacement of the field glasses, compass, or revolver.

Uniform of prisoners.—Usually, officers are allowed to wear their service uniform in captivity, as are also rank and file prisoners unless for some reason a special kind of clothing is issued to them; this is sometimes done when they are employed in working parties, in order to make evasions more difficult. Officers (and other ranks sometimes) are usually able to obtain replacements of worn-out uniform and other necessities from their own country. On various occasions in the late war on the Iraq front the kits of captured British flying officers were dropped by our aircraft in the Turkish lines and appear to have reached their owners.¹ In one case at least a letter from a captured British officer was dropped by a German aircraft and was found to contain a request that warm clothes, chocolate, etc., should be dropped by our aircraft for him.² Gen. Townshend states that when an aeroplane with two British officers was shot down by the Turks on the Tigris on 16 September, 1915, he "wrote to the Turkish commander sending some money and clothes for the officers, in the hope that they were alive."³ Mr. Edmund Candler, the war correspondent, states that when two of our aviators fell into the Turks' hands, the Turkish General Nur-ud-Din sent an Arab into our camp at their request, asking that their kits should be sent to them. This was done, and money was sent also, but meanwhile the captured aviators had gone north, and the kits and money were returned by Nur-ud-Din with a courteous message that the aviators would be his guests and would be in no need.⁴

"Whilst in the German mess," says an R.F.C. officer, Major A. J. Evans, who was captured with two Australian flying officers in Palestine on 19 March, 1918, "we had written notes which the Germans promised to drop over the lines for us. In them we merely stated that we were safe and well, and asked that small kits might be dropped over for us, and signed them, Lee, Austin, and Everard [the name which Major Evans had assumed for the time]. Some months later, while prisoners at Afion-Karah-Hissar, we all three received bundles of clothes and necessities, which were dropped from British planes and then forwarded to us."⁵

In the great war the Germans tried to supplement the

¹ Lieut.-Col. J. E. Tennant, *In the Clouds above Baghdad*, p. 221.

² Tennant, *op. cit.*, p. 243.

³ Sir C. V. F. Townshend, *My Campaign in Mesopotamia*, 1920, p. 110.

⁴ Candler, *The Long Road to Baghdad*, 1919, i, 108.

⁵ Major A. J. Evans, *The Escaping Club*, 1921, p. 217.

measures—strangely inefficient for the most part—which they took for guarding their prisoners of war by making those who had attempted to escape wear a special uniform of variegated colours.¹ Only prisoners below commissioned rank appear to have been forced to wear this kind of dress.

Punishment for attempted escape.—Prisoners of war attempting to escape may be fired upon and, if necessary, killed in the actual attempt. If recaptured before they have succeeded in rejoining their own forces they may be subjected to disciplinary punishment. (They may not be punished for a prior successful escape if they have once reached their forces and are again captured.) “Disciplinary punishment” excludes a sentence of death.² That this rule is not generally understood is shown by an editorial comment in *The Aeroplane* of 29 September, 1915. The paper, referring to the sentence of six months’ imprisonment passed upon two German prisoners of war who escaped from Dorchester Camp and were recaptured after entering a “prohibited area”—Hartlepool—states that the sentence “seems fairly mild as one would expect escaped prisoners to be shot.” To shoot a recaptured prisoner in such circumstances would be contrary to the Hague Regulations, as interpreted at the Conference of 1907.

Usually prisoners recaptured while attempting to escape are punished with imprisonment, with or without hard labour. One finds frequent references in the press of the time to sentences of imprisonment passed upon German prisoners who escaped from British internment camps during the great war and were secured before they could leave the country.³ The French pilot, Sergeant Lacoste, who was a prisoner in Germany for three years, spent of that time some 192 days in all in prison cells on account of his three separate attempts to escape.⁴

¹ See the cases of Sergeant-pilote Pinchard and Sergeant Lacoste in *La Guerre aérienne*, 25 October, 1917, p. 794, and 8 August, 1918, p. 617. As a further precaution, the heads of these N.C.O.’s were half-shaved.

² Edmonds and Oppenheim, *Land Warfare*, § 76; American Rules of Land Warfare, § 79; Fauchille-Bonfils, *Droit Int.*, ii. § 1128.

³ For instance, three Germans were committed for three months to Woking Prison on 13 July, 1915, for an attempted escape from Leigh Camp (*Times*, 14 July, 1915). Three others were sentenced by a military court at Chester Castle a little later to 84 days’ imprisonment, without hard labour, and committed to Chelmsford Prison, for attempting to escape from Dyffryn Aled Camp, Denbigh (*Pall Mall Gazette*, 2 September, 1915).

⁴ *La Guerre aérienne*, 8 August, 1918, p. 632. See Evans, *The Escaping Club*, 1921, as to the punishments (*Stubenarrest* and confinement in “Strafe” Camps) of prisoners who tried to escape from Germany.

Vicarious punishment of prisoners.—There is no authority in the Land Warfare Regulations for the punishment of prisoners of war on account of the successful escape of one or more of their comrades, but prisoners have, in fact, been imprisoned more than once on this account.¹ The legality of so punishing them is open to question, but it must be confessed that the whole question of reprisals (with which the present question is interconnected, at any rate when the escape was the result of a breach of parole) is at present in a very unsatisfactory position.

Reprisals upon prisoners.—Reprisals are not banned by any international Convention or agreement; they are not referred to in the Land Warfare Regulations. Attempts to place the question upon a clear footing have so far failed whenever made at international conferences. Consequently one cannot speak with any certainty upon the matter, but it is at any rate an undoubted fact that reprisals upon prisoners of war are admitted by the custom of war. They were inflicted upon prisoners again and again in the late war. One notable instance was that of Mr. Churchill's confinement of the German submarine crews in Chatham and Devonport Detention Barracks. The German Government promptly retaliated by placing thirty-nine British officers in "arrest barracks."² The counter-reprisal was successful; Mr. Balfour, Mr. Churchill's successor as First Lord of the Admiralty, announced in the House of Commons on 9 June, 1915, that his predecessor's policy had been abandoned and that the submarine prisoners were being treated as ordinary prisoners of war.³ No doubt it was in the light of this experience that, in the face of a popular demand for the infliction of reprisals upon the crews of captured raiding airships, the Government declined to treat them otherwise than as ordinary prisoners.⁴ Nevertheless,

¹ Cases of the kind occurred in the Franco-German War of 1870-71, and in the late war it is recorded that, after the escape of Garros, the other French prisoners in the same camp were confined in cells as a punishment (De Chavanges, *De Guynemer à Fonck*, p. 149).

² *The Times*, 26 and 28 April, 1915. The way in which the British "reprisal officers" were treated is described by Rev. B. G. O'Rorke, *In the Hands of the Enemy*, 1915, pp. 80-6.

³ Mr. Forster, referring to this abortive attempt to deter the Germans from continuing their submarine campaign, stated in the House of Commons on 12 October, 1915, that "he, for one, did not think that the result of the method in that connection was sufficiently happy to justify our trying retaliation again."

⁴ Mr. Tennant stated in the House of Commons on 13 April, 1916: "The officers and men of the captured Zeppelins are guarded and treated precisely as other prisoners of war."

resort continued to be made from time to time to retaliation upon prisoners. During the early part of 1917 the Germans thus retaliated upon French prisoners in reprisal for the French action in employing German prisoners within a short distance of the front line.¹ They also housed a number of French officers in industrial districts exposed to air attack in retaliation for France's embarkation of German staff officers as hostages in hospital ships in the Mediterranean.² British officers were also the sufferers for acts of policy for which they were personally in no way responsible; among others, two captured flying officers were confined during the summer of 1917 in tiny cells as a reprisal for the alleged ill-treatment of German prisoners in England.³ Some amelioration of the position of prisoners in regard to reprisals was brought about by a conference between representatives of the belligerents at The Hague in July, 1917. It was agreed, *inter alia*, that in no case should a belligerent resort to reprisals unless four weeks' notice of his intention had been given to the Government whose *personnel* were affected.⁴

There does not appear to have been any authenticated case in the great war in which prisoners were executed as a reprisal; but the French Government threatened to execute two Austrian airmen-prisoners for every French airman whom the Austrians executed under the terms of a proclamation threatening that fate to enemy airmen captured while distributing leaflets.⁵

"Prophylactic" reprisals.—The development of the air arm led to the appearance in the great war in a new form of a question which had already caused difficulties in prior wars. This was the question of "reprisals in advance," that is, the deliberate placing of enemy nationals in situations in which they were peculiarly liable to be injured by hostile acts undertaken by their compatriots and regarded by the belligerent authorising the reprisals as illegitimate. The question arose in 1870-71 in regard to the carriage of French civilians in railway trains in the districts occupied by the German forces, as a precaution against interference with the lines; and again in

¹ See *The Times*, 24 March, 1917.

² *Ibid.*, 11 May, 1917.

³ See letters from G. J. Insall, Esq., in *The Times*, 3 July, 1917, in regard to the treatment of his son, Lieut. G. S. M. Insall, V.C., R.F.C., at Crefeld, and the letter from the father of Lieut. G. C. Formilli, R.G.A., attached R.F.C., in *The Times*, 6 July, 1917.

⁴ The text of the agreement is given in White Paper Cd. 8590, issued 2 August, 1917. See *The Times*, 3 August, 1917.

⁵ See p. 304.

S. Africa in 1900-1 in similar circumstances.¹ It reappeared in 1914-18 in connection with air raids upon towns and villages which the belligerent attacked regarded as no proper mark for bombardment.

The Gallipoli case.—The first step in exposing prisoners or enemy civilians to the risks of bombardment was taken by the Turkish Government in May, 1915. At the beginning of that month Enver Pasha, the War Minister, informed Mr. Henry Morgenthau, the American Ambassador at Constantinople, that it had been decided to send down to Gallipoli between 2000 and 3000 British and French citizens, resident in Constantinople, to share the risks of the local Turkish population, who, he alleged, were being bombarded by the Allied fleet, in defiance of international law. (Actually, only Gallipoli village was being shelled, and, as it was the Turkish military headquarters, it was a perfectly legitimate objective.) Later, as the result of Mr. Morgenthau's intervention, the number of hostages was reduced to fifty. These hostages were kept for a week in Gallipoli village; they suffered no harm, but much discomfort. Mr. Morgenthau had at once reported the Turkish proposal to London, through the American State Department, and on 7 May, 1915, Sir E. Grey requested Mr. Morgenthau to inform Enver that the British Government would hold the Ottoman Ministers personally responsible for any injury to the hostages. This message was delivered on 9 May, but the return of the hostages a little later was apparently due not so much to the British warning as to the cessation of the bombardment of the village in consequence of the withdrawal from it of the Turkish headquarters.²

The case of Bukharest.—The next case occurred in Bukharest, when that city was subjected to repeated attacks by German and Austrian aircraft shortly after Roumania's entry of the war. The date at which the policy of interning the resident German and Austrian subjects in quarters exposed to air attack was first adopted is not quite clear. The press reports of the time are inconsistent.³

¹ See the present writer's *War Rights on Land*, 1911, pp. 465-70, for a discussion of the cases arising in 1870-71 and 1900-1.

² See H. Morgenthau, *Secrets of the Bosphorus*, 1918, pp. 153-66; dispatch of Arthur Ruhl, of *Collier's Weekly*, who accompanied the hostages as a volunteer in the *Daily Mail* of 31 August, 1915; also *Daily Mail* of 14 and 18 August, 1915, and reply by Lord R. Cecil in House of Commons on 10 January, 1916.

³ Early in September Reuter's correspondent at Bukharest reported that the Roumanian Government was taking steps "to intern well-known enemy subjects

From the diary of a British lady who was resident in Bukharest at the time, it appears that the German male civilians in the city were already interned in hotels in September, 1916, and that in October there was also in existence an internment camp in which "sixteen fat Germans" fell victims to bombs dropped by a German Zeppelin.¹ M. Mortane states that Roumania, in exposing the resident enemy aliens to the risks of air attack, was merely copying what Germany had already done,² but he quotes no evidence in support of this statement, and it is very doubtful if, in fact, anything of the kind had then been done by Germany.

The case of Karlsruhe.—During 1917, however, Germany did take steps to use prisoners as hostages against air attack, though the date at which this policy was adopted is not clear.³ There was certainly an internment camp at Karlsruhe early in 1917,⁴ and it was reported unofficially that its establishment was the result of the various raids upon the city, culminating in that of 9 January, 1917. It was installed, we are informed by a historian, near the royal residence and the railway station, in order that the danger to the French and English officers concerned might lead to a cessation of their compatriots' air attacks.⁵

An English officer who was interned there records the fact that the camp was in the centre of the town, surrounded by high buildings, hotels, restaurants, and mansions, but does not state whether its being so located was for the purpose of protecting the neighbouring buildings or not. He adds that the site had been the scene of a tragedy in the spring of 1916, when a large number of civilians, including women and children, were killed by bombs dropped by Allied airmen. The attacking airmen bombed, unintentionally, a crowd of people seeking

in hotels and private houses in the centre of the city where they will thus be exposed to danger from the enemy's bombs" (*Daily Mail*, 8 September, 1916). *The Times* correspondent there reported at the end of the month that the authorities were contemplating the taking of the steps here referred to (*The Times*, 2 October, 1916), but apparently they had already been taken, for on 28 September, 1916, Mr. Hamilton Fyfe reported that Germans were already interned in hotels in the centre of the city (*Daily Mail*, 2 October, 1916).

¹ Lady Kennard, *A Roumanian Diary, 1915-17, 1917*, pp. 55-72.

² "Cette mesure raffinée est déjà employée par l'ennemi qui nous l'a apprise" (Mortane, *Histoire illustrée de la Guerre aérienne*, ii. 36).

³ Garner, *Int. Law and the World War*, i. 493, states that the policy was adopted in February, 1918, but it had certainly been put into execution at a considerably earlier date than that.

⁴ The camp was in existence in February, 1917. See an extract from the *Basler Nachrichten* of 21 February, in the *Daily Mail*, 23 February, 1917.

⁵ J. Mortane, *Histoire illustrée de la Guerre aérienne*, i. p. 220.

admission to the circus and menagerie which were at that time located in the square.¹ Whether it was with the object of preventing further attacks that the *Kriegsgefangenenlager* was installed in this particular place one cannot tell. At any rate it was reported from Switzerland at the end of April, 1917, that large numbers of British officers were pouring into this camp, which, it was stated, had been established "as a precaution against the bombardment of the town by Allied aviators."² It is, however, by no means certain that the camp at Karlsruhe was not an ordinary transit or concentration camp—a *Durchgangslager*—for prisoners of war. At any rate Mr. Bonar Law informed Col. C. Lowther, in reply to a question in the House of Commons, on 21 June, 1917, that: "It has been formally stated by the German Government that the internment of Allied officers in the prisoners' camp at Karlsruhe has no connection with the policy of reprisals." If it was—as it is quite possible that it was—a kind of collecting camp, the fact that it was in a frequently raided town did not give the Allies cause for complaint. Collecting camps on the Allies' side of the line were bombed by the Germans on various occasions and a large number of German prisoners were killed or wounded by their compatriots' bombs.³

The illumination of prisoners' camps.—There is, however, evidence that then or later prisoners were kept, not only in the camp at Karlsruhe, but in hotels in the town, near the railway station.⁴ Moreover, the camps here and elsewhere appear to have been illuminated when the rest of the district was kept in darkness on account of the approach of hostile aircraft. "With customary perfidy," wrote M. Mortane in August, 1917, "the enemy has established in the towns which we usually bombard prisoners' camps in which they are kept as a kind of hostages. Like the 'circuses,' they are moved from place to place along the front. We bomb Thionville. At once the 'circus' of captives is sent there. Thus Lieut. de Castellane, glorious pilot of V.B. 101, recently captured, has already made various sojourns in the towns most exposed to our blows. As a refinement of baseness, the Germans

¹ Joseph Lee, *A Captive in Karlsruhe*, 1920, pp. 29, 96-7.

² Exchange Telegraph Co.'s correspondent, Lausanne, in *The Times*, 28 April, 1917. See also *The Aeroplane*, 9 May, 1917, and *Flight*, 31 May, 1917.

³ See the British official *communiqués* of 19 August and 6 September, 1917, and the French *communiqué* of 21 August, 1917, reporting cases of this kind.

⁴ Lieut. Mézergues, a French pilot, was kept in a hotel near the station at Karlsruhe (*La Guerre aérienne*, 15 August, 1918, p. 643).

put out the lights when the bombers are signalled and light up the prisoners' camps brilliantly." ¹

The effect at Karlsruhe, at any rate, was different from that expected by the Germans. A French pilot, Sous-lieut. Constantini, who was kept for a time at the Karlsruhe camp, states that the Allies' raids acted as a moral tonic to the captives and brought about a result which had elements of comedy in it: the people of the town, thinking that the raiding airmen knew the position of the camp and would carefully avoid bombing it, assembled around it as a sanctuary during the raids. ²

The cases of Freiburg and Stuttgart.—Freiburg-in-Breisgau and Stuttgart were other towns in which the policy of the "*paratonnerres*," or lightning-conductors, as the French called it, was adopted. ³ On 14 April, 1917, Freiburg had been the objective of a particularly damaging British raid, in reprisal for the submarine attacks on British hospital ships, and the University there, especially the medical school, had suffered very severely. A Berlin semi-official message of 12 May, 1917, stated that a new "camp" for prisoners of war had been established in the town, in a number of hotels, and that British and French officers of all ranks were being transferred thereto. ⁴ In January, 1918, some 400 prisoners were in the town, distributed in various districts, and it is stated that nearly 50 had been killed by bombs dropped by Allied aircraft. ⁵ Prisoners were also kept in various parts of Stuttgart, in order, said a German paper, that they might share with the population the dangers of air attack. ⁶

The British camps in exposed districts.—At the beginning of 1918 Great Britain adopted a similar policy. As early as the beginning of February, 1916, a correspondent in the press had suggested that internment camps for prisoners of war should be formed near the more important munition factories. ⁷ In May, 1917, the press agitation for the housing of prisoners in exposed towns was renewed, after the raid upon Folkestone

¹ *La Guerre aérienne*, 30 August, 1917, p. 658.

² *Ibid.*, 12 December, 1918, pp. 910-11.

³ There was apparently a reprisal camp in existence at Strassburg also in September, 1917. Lieut. Pat. O'Brien states (*Outwitting the Hun*, 1918, p. 72) that he was informed by a prison guard at Courtrai, where he was then confined, that he was destined for that camp, when orders came for his transfer, and that its purpose was "to keep our airmen from bombing the place." Lieut. O'Brien never reached Strassburg, for he escaped from the train *en route*.

⁴ See *The Times*, 14 May, 1917.

⁵ Mortane, *Histoire illustrée de la Guerre aérienne*, i. 369.

⁶ *Frankfurter Zeitung*, 31 December, 1917, quoted in *Flight*, 3 January, 1918.

⁷ See letter in the *Daily Mail*, 5 February, 1916.

towards the end of that month.¹ The Government refused to accept the suggestion that the Isle of Thanet should be safeguarded in this way.² The agitation, however, continued,³ and the Government was driven to consider the matter. Mr. Macpherson stated in the House of Commons on 22 January, 1918, that inquiries were still proceeding in regard to the truth of the allegations that our prisoners were being exposed to air attacks in Germany, and on 5 February, 1918, he informed the House that: "Information has been received which leaves no doubt that the German authorities have placed officer prisoners of war in localities which are specially subject to air raids. Similar action is contemplated in this country."

By May, 1918, a large number of German officers were established in requisitioned schools and other buildings at Ramsgate, Margate, and Southend.⁴ In one case at least the building in which the prisoners were housed had previously been used as a hospital for British or Dominion sick or wounded soldiers. Clearly, other things being equal, it was preferable on grounds of humanity that able-bodied Germans should be exposed to air attack rather than our own disabled men, and if it had been a case of simple and inevitable exchange of quarters there would be little to be said. If, however, it was not a matter of exchange, direct or indirect, but of the removal from the south-east coast of the hospitals situated there to some fresh locality and the filling of the buildings thus evacuated with prisoners for whom there was plenty of accommodation in the camps in which they had hitherto been confined, the motive of the change was clearly not solely the humanitarian one of sparing our sick and wounded.

The legitimacy of exposed camps for prisoners.—The facts and motives are not sufficiently clear to pronounce an opinion with any certainty upon the right or wrong of what was done in Germany and in England in 1917-18. The law of the matter is, however, perfectly clear. Reprisals are not forbidden by the laws of war. They may be legitimately enforced in certain

¹ See the *Weekly Dispatch*, 25 May, 1917.

² Reply of Mr. Bonar Law to Capt. Weigall in the House of Commons on 20 June, 1917.

³ A correspondent of the *Observer* suggested in June, 1917, that to prevent air raids upon the city of London, the Government should take over the top floor of Liverpool St. Hotel, Cannon St. Hotel, and other prominent hotels near the city, and should lodge there the officers then kept at Donington Hall (quoted in *Flight*, 21 June, 1917).

⁴ Answer of Mr. Macpherson in the House of Commons on 7 May, 1918; see also *Daily Mail*, 9 May, 1918.

circumstances against prisoners of war. In theory at all events it would be justifiable to deter an enemy from committing or continuing an unlawful act (e.g. bombing a hospital) by placing his prisoners in a position in which they would suffer from that act. But the first and sole justification of reprisals is that they are *deterrent*. Their very essence is prevention. Vengeance should not enter into them at all. Measures taken not to prevent the enemy from continuing to carry out acts of a prohibited nature but to give those taking them the satisfaction of feeling—and of showing the “man in the street”—that enemy nationals are the first to suffer from their compatriots’ acts, are not approved by international law. They are not, indeed, reprisals at all. They are something far more primitive, unsophisticated and red-blooded: sheer, old-fashioned vengeance, in fact.

It can hardly have been seriously expected that the adoption of the policy of the *paratonnerres* in the great war would really lead to a cessation of the bombing attacks upon the towns selected for the camps. The London area had been a site—and was known in Germany to be the site—of prisoners’ camps for some years, yet it had been repeatedly bombed.¹ Attacks on Bukharest, Karlsruhe, etc., continued unabated after the camps were established there. A belligerent will never shrink from sacrificing his troops as the price of success. He will launch thousands of men upon a foredoomed feint or holding attack if by losing them he can break through at another point. So, if it is to his military advantage to bomb a given town, he will not be deterred by the thought that his nationals—the prisoners of war confined in the town—may suffer. The exposing of prisoners is, therefore, entirely unlikely ever to prove a real preventive of bombing attacks, and for that reason it should be unequivocally condemned by international law. It is much to be desired that that condemnation should be made the subject of a definite, agreed prohibition. No doubt the rule will be liable to be evaded in future, as in the past,

¹ Repatriated German prisoners were convinced that the Alexandra Palace was deliberately chosen for their internment because it was exposed to air raids (see *Daily Mail*, 10 June, 1918, quoting from the *Lokalanzeiger*; also *Flight*, 13 June 1918). Lord Newton informed the Press Association on 14 March, 1918, that in sending prisoners to exposed areas we were merely copying Germany, who claimed, he stated, that our men were kept in Karlsruhe because there was suitable accommodation there. He pointed out that huge camps for prisoners of war had long been established in London. “Reprisals,” he said, “is not the exact word to use, even if we are, in fact, following the German practice.” His words were truer, but in a sense other, than he perhaps appreciated.

on the pretence that prisoners are sent to a raided town because there is accommodation there. But at all events the prohibition will stand in black and white, as it does not now, and the better practice of belligerents will tend to conform to it.

The interrogation of prisoners of war.—Under the Land Warfare Regulations (Art. 9) "every prisoner of war is bound to give, if questioned, his true name and rank, and if he infringes this rule he is liable to have the advantages given to prisoners of his own class curtailed." This loss of privileges is the only punishment which a refusal to state the name and rank entails upon a prisoner, and he may not be deprived of any privileges because he refuses to give other information. He may, however, be questioned on any and every subject, but he is not bound to reply. "It is permissible to employ every means, provided they are humane and not compulsive, to obtain all the information possible from prisoners with regard to the numbers, movements, and location of the enemy. A prisoner cannot, however, be punished for giving false information about his own army."¹ Captured American pilots appear to have delighted in giving false information to the Germans in the late war. One, a pilot named Miller, is stated to have been "questioned about his name, his squadron, and many other details which they were foolish enough to think they could tempt out of him. Miller, of course, had an enjoyable half-hour stuffing them with the most marvellous stories that a Baltimore education could invent."²

Another, Lieut. H. G. MacLure, was "repeatedly asked by the Germans during his imprisonment, 'How many Americans are there in France?' and he always replied 'at least five millions.'"³

A German pilot whom Major Biddle of the 13th Aero Squadron, American Army, brought down, was unusually communicative. "He seemed thankful to have escaped with his life and was anxious to answer my questions, for I think he

¹ Edmonds and Oppenheim, *Land Warfare*, § 68; American *Rules of Land Warfare*, § 58. German prisoners were questioned on many subjects and were usually ready to answer: "Millions of questions were put to German prisoners and millions of questions were answered" (Capt. F. Tuohy, *The Secret Corps*, 1920, pp. 251-69). Hindenburg (*Out of My Life*, Eng. trans., 1920, p. 360) commends highly a German N.C.O. who lied to his captors when questioned as to an impending attack.

² E. V. Rickenbacker, *Fighting the Flying Circus*, 1919, p. 199.

³ *New England Aviators*, 1919, ii. 212. A captured French airman, *Maréchal des logis* De Tascher, when interrogated, replied that his duty was to say nothing and if forced to speak he would lie; after that his questioners desisted (*La Guerre aérienne*, 13 December, 1917, p. 68).

realised that after I had knocked out his observer I could have killed him if I had wanted to. He even went so far as to tell us the unit to which he belonged, the number of machines in his squadron, and to show us on the map the location of his aerodrome. He may, of course, have been lying about these, particularly the latter, for no man with any sand at all would give away the position of his field."¹

Compulsion of prisoners to give military information.—To force a prisoner to indicate the positions of his own forces would be contrary to international law. There was current in Germany at the end of 1914 an absurd story that a German prisoner, Erich Callies by name, had been compelled by his captors to make flights above the German lines—and, to add to the horror, for some inscrutable reason to make them in a completely unclothed condition—in order to point out the position of the German troops to the English pilot who took him up.² The story was denounced as a "pure fabrication" in a statement of 19 January, 1915, by the British official "Eye-witness," and is worthy of mention only for the purpose of stating that, if it had been true, it would have been an altogether illegitimate infringement of the rights of a prisoner of war.

Devices for obtaining military information from prisoners.—The interrogation of captured enemy airmen was frequently the source of much valuable information to their captors. The frequency of forced descents in hostile ground made it possible to secure and question enemy *personnel* at times when otherwise this means of procuring information was not available. One finds constant reference to the obtaining of information in this way.³ The various devices used for eliciting news from prisoners generally⁴ were employed also where

¹ C. J. Biddle, *The Way of the Eagle*, 1919, p. 247.

² See the account of this incident in the *Leipziger Volkszeitung* quoted by Franz Mahlke, *Hoch in den Lüften*, 1916, pp. 106-8. See also the sworn statement of the prisoner in the *Frankfurter Zeitung*, 18 December, 1914, quoted in *The Aeroplane*, 27 January, 1915; *The Aeroplane*, 30 December, 1914; *The Times*, 11 May, 1915.

³ See, for example, Hall and Nordhoff, *Lafayette Flying Corps*, ii. 253; M. Baring, *R.F.C.H.Q.*, 1920, p. 141.

⁴ Devices for overhearing the casual talk of prisoners, the leading of prisoners to believe that they could speak freely among themselves when one of their number was, in fact, in our pay, cross-examination, harsh or confidential, according to the type of prisoner to be experimented upon, the familiar trick of pretending that we already knew all that the prisoner had to tell and that, therefore, secrecy was ridiculous, all these various means of eliciting information were employed freely and successfully" (Dewar and Boraston, *Sir Douglas Haig's Command*, 1922, vol. ii., p. 69).

captured airmen were concerned. The use of microphones for overhearing their private conversation was common, and attempts to escape were sometimes frustrated as a result of the detection of the plans by this means.¹ The practice of "planting" a bogus fellow-prisoner upon the captured *personnel*² was also employed. Lieut. Constantini, of the French aviation, records how, as a prisoner in Germany, he received a "friendly visit" soon after his capture from a young "Belgicho-Boche" airman, in English uniform, who plied him with many apparently innocent but insidious questions: such as the kind of armament Guynemer had, etc. Constantini declined to give any information.³

"Friendly" or unofficial interrogation.—The courtesies shown to crashed enemy airmen were, in some cases at least, inspired by the expectation that wine and good food would make the tongue wag more freely. Second-Lieut. H. A. Tracey, R.F.C., who was shot down, with his observer, Lieut. A. Rowan, north of Lake Doiran on 1 January, 1918, states that at Hudora, where they were kept for some days before being sent to Uskub and Philippopolis, "we were well supplied with drinks to try to get us to give away information while in an inebriated state."⁴ Boelcke seems to have relied on the effect of coffee rather than of wine as a tongue-loosener in such circumstances. In a letter of 4 September, 1916, he tells how he visited an English captain whom he had brought down; "I invited him to take coffee at the mess and then took him to visit the squadron. I have learnt a lot of interesting things."⁵ The initial interrogation was often supplemented by a less formal questioning of this kind. Indeed, the German authorities are stated to have attached to their aviation service on the western front

¹ See, e.g., the cases quoted in *La Guerre aérienne*, 13 December, 1917, p. 68; 12 December, 1918, p. 910; 31 July, 1919, p. 491.

² "In the concentration camps there are always several persons, usually deserters from the other side, who have passed to our service. Whenever necessary these persons disguise themselves as prisoners and in this way they often succeed in gaining the confidence of the most reserved and those who have enveloped themselves in the most profound silence whenever questioned. . . . In this service the Czechs have been especially valuable and have often furnished us with precious information" (Lieut. C. de Carlo, *The Flying Spy*, Eng. trans., pp. 62-3).

³ Constantini, *Chez les Boches et chez nous*, in *La Guerre aérienne*, 28 November, 1918, p. 878.

⁴ H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 98.

⁵ Boelcke, *Feldberichte*, p. 112. "They gave me a very good dinner of champagne and oysters," wrote an R.F.C. officer, who was captured in 1915, "and I was treated as an honoured guest" (quoted, *The Observer*, 27 February, 1916; Turner, *The Struggle in the Air*, 1914-18, p. 54). One imagines that the feasting had an ulterior object in such cases.

a special officer—the Grand Duke of Mecklenburg Strelitz—for the purpose of “pumping” British flying officers who had been captured and who were being entertained in their captors’ messes. The Grand Duke had been educated in England and could pose successfully, in British uniform, as a previously captured fellow-officer of those whom he interrogated.¹

Capt. Mézergues, the French “Ace,” was forced to land in German territory on 22 August, 1917. He was courteously treated by his captors. On being taken to the État-Major, he was asked by an officer, “What is your squadron and your group?” “‘I shall tell nothing,’ was my sole reply, and, seeing that, the officer did not insist.” Soon afterwards he was removed to Colmar, where he was invited to lunch at the aviation headquarters mess, and, when in reply to questions addressed to him he made it clear that he would give no information, the German officers refrained from pressing him.²

Sergeant Papeil, who was brought down behind the German lines in an air combat on 15 April, 1917, has recorded how he was brought before a General, “who tried to obtain information from me as to the difference between a Nieuport and a Spad, and also whether there were Senegalese troops on his front. I told him that being a French soldier I could give him no information, and he did not insist.” Afterwards he was invited to *déjeuner* at his vanquishers’ mess and was there subjected to much questioning as to the treatment of prisoners of war taken by the French, the fate reserved for German airmen captured in possession of explosive bullets, or without proper marks on their machines, etc. He was afterwards further interrogated by a staff officer, but refused to give any information.³

An American pilot's experience.—An American officer, on the other hand, relates his experiences as follows: “I had often been warned,” he says, “that a prisoner must be very much on his guard. I had heard that a favourite German ruse with a captured aviator is to take him to a squadron mess, wine and dine him, particularly the first, so that he may

¹ Capt. F. Tuohy, *The Secret Corps*, 1920, p. 265. It was the custom in both the British and the German air services to treat a captured pilot, who was uninjured, as the guest of the squadron which brought him down, for the rest of the day of capture. “Afterwards—prison camp, of course!” (“Wings” (Capt., R.A.F.), *Over the German Lines*, 1918, p. 77).

² Mézergues, *Ma Captivité et mon Évasion*, in *La Vie aérienne*, 31 July, 1919, p. 491.

³ *La Guerre aérienne*, 13 December, 1917, p. 67.

forget his caution. Then, when he is sufficiently mellow, they pump him dry of information." This officer found, however, that none of the German officers to whose mess he was taken made any attempt to "pump" him. When the intelligence officer came to question him, he declined to answer any question bearing on the location of his own or other Allied squadrons, on troop movements, etc., and the intelligence officer did not press him. The American officer refused to be hoodwinked by a display of omniscience as to the Allied line and its components, on the part of the intelligence officer, and "when, among other photographs, I saw a beautiful one of my own aerodrome, I believe that I successfully registered only polite interest." The way in which this particular officer was interrogated was a model of correctness and he records a justified opinion that, in his case at any rate, his captors were gentlemen.¹

A British pilot's experience.—A British officer, Lieut. L. G. Taylor, R.F.C., has recorded how pertinaciously he and his observer, Lieut. Le Fevre, were interrogated upon their capture. First one officer and then the other were asked repeatedly where they came from, where they had been on the night when they were captured, how long they were in the air, what bombs they were carrying, and how much petrol they had. They refused to give any information except their names, rank, ages, and address (which they gave as "Air Board, England").

Afterwards a German officer offered to have a letter to the captured officers' relatives dropped in the British lines, if they would say from which part of the front they had come. This information they also refused. "I could see the devilish cunning," says Lieut. Taylor, "in his method of playing on the feelings of your people at home, but it didn't work this time."²

Other officers' experiences.—The display to a captured flying officer of photographs of his aerodrome and the pretence that his captors already knew all about him were common devices for obtaining information. Lieut. W. J. Buchanan, R.F.C., who was captured by the Bulgarians in September, 1918, was "questioned about Marian Aerodrome and gave evasive answers; I was told it was useless to lie, as they had already full information, and produced photographs of this

¹ Hall and Nordhoff, *The Lafayette Flying Corps*, ii. 282-4.

² Major Gordon Burge, *Annals of 100 Squadron*, pp. 141-52.

aerodrome, showing five machines on the ground, and of Amberkoj and Salonika, taken only a few days previously. Every attempt was made to catch me out and on one occasion he was successful. I was asked if I had been on this front any length of time and I told him I had only just arrived. Later he asked me if I knew Lieut. Gaynor and on my replying that we were in the same squadron, he said, 'Well, that officer has been out here nine months, so I suppose you have too.'"¹

Capt. von Gröne, a German pilot, who was captured by the British in Mesopotamia in 1917, is mentioned with respect by Lieut.-Col. J. E. Tennant because, though ill and exhausted, his "manner and reticence" were irreproachable and "the Intelligence Department got little from him."² So, too, Capt. Wedgwood Benn has placed on record the correct demeanour of an Austrian flying officer who was brought down near Treviso in 1918. He had been a solicitor and as a prisoner "he helped willingly in the office, but although bombarded from all sides with inquiries in French, Italian, and German, he always replied with smiling, courteous firmness to what he considered military questions, 'Das kann ich nicht sagen.'"³

The paroling of prisoners.—The Land Warfare Regulations provide (Art. 10) that prisoners of war may be set at liberty on parole *if the laws of their country allow it*, and "in such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given." Another Article (11) provides that "a prisoner cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole." "Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war and may be put on trial before the Courts" (Art. 12). Breach of parole entails upon a recaptured prisoner, under some military codes, the death penalty.⁴ The duties upon which a prisoner released on parole may be employed depend upon the precise form of the undertaking

¹ H. A. Jones, *Over the Balkans and South Russia*, 1923, p. 119.

² Tennant, *In the Clouds above Baghdad*, p. 186.

³ Wedgwood Benn, *In the Side Shows*, 1919, p. 248.

⁴ Edmonds and Oppenheim, *Land Warfare*, § 101, note, referring to the French Military Code.

which he gives ; the undertaking may be merely not to bear arms again against the Government releasing him or it may preclude his rendering any kind of service (e.g. staff work at home, training, etc.) to his own forces.

In the late war British officers and men who were taken prisoners by the Germans were not allowed to give their parole. A suggestion that they should be allowed to do so was made in the House of Commons on 10 July, 1916, and Mr. Asquith then stated that he did not consider the proposal a practicable one. In a few exceptional cases, however, parole given by civilian prisoners was recognised. Thus a Mr. Hollander, a civilian of military age, was released from internment at Carlsbad on 24 August, 1914, on giving his parole not to bear arms against the Central Powers, and when the question of his being called up under the Military Service Act arose in March, 1916, this parole was recognised and he was exempted from service.¹

Interned belligerent personnel and parole.—Parole is used in international law in two distinct senses. The first is that referred to in the articles of the Land Warfare Regulations quoted above. The other relates to the less rigorous kind of internment which is often allowed to an individual who is prepared to give an undertaking not to try to escape, and in this sense the term "paroled" connotes not release but merely a certain measure of freedom of movement within the territory in which the paroled person is confined. Usually this latter kind of parole obtains only in the case of belligerent *personnel* interned in a neutral country. A breach of it is held to impose upon the Government of the individual concerned the obligation to return him to the authorities of the country from which he escaped. When the pilot Gilbert escaped from Switzerland in August, 1915, under circumstances which were held to amount to breach of parole, the French Government sent him back to Switzerland.² Germany sent back to Holland two German officers who broke their parole and escaped from internment.³ On the other hand, when two German non-commissioned officers, who had given their parole, escaped from Norway, where they

¹ Reply by Mr. Tennant to a question in the House of Commons, 8 March, 1916.

² See Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 584; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1137 (1); *La Guerre aérienne*, 20 June, 1918, pp. 507-10.

³ Reuter report from The Hague, 9 December, 1914, confirmed by Reuter report from Amsterdam (*The Times*, 10 December, 1914; *Pall Mall Gazette*, 14 December, 1914).

were interned, in breach of it, Germany declined to return them on the ground that, not being officers, they could not validly give their parole, and that the neutral authorities were at fault in asking for, and accepting, their parole.¹

An officer who has given but has subsequently withdrawn unequivocally his parole is fully entitled to try to escape. Lieut. G. H. Eastwood, R.F.C., who was interned at Groningen, withdrew his parole and was sent, in consequence, to Wierickeschans for closer guarding ; he escaped from the latter camp and in so doing acted within his rights.²

Deprivation of rights of prisoners of war.—A prisoner of war who has given his parole not to bear arms against the paroling belligerent and is subsequently captured in arms is not entitled to the privileges of a prisoner of war on such recapture. This is true, also, of an individual captured in the enemy's ranks and found to be a deserter from the captor belligerent's forces or one who is a national of that belligerent's State and whose service with the enemy, therefore, constitutes treason.³ Prisoners may also be deprived of their privileges on conviction for an offence against the laws of war or for a crime or misdemeanour committed while in captivity. An act of insubordination would justify punishment by imprisonment with or without hard labour. But to punish a prisoner for such an act as that attributed to a non-commissioned officer in a well-known case which arose in the late war is almost ridiculous. This was the case of Sergeant E. A. Boyd, of the British naval air service, who, while serving as observer in an aircraft, was shot down by a German torpedo-boat and captured off Ostend in September, 1917. When shot down, he wrote on a slip of paper, which he intended to dispatch by carrier-pigeon, the words : " Shot down at 6.42. Picked up by the Huns." The paper was seized before it could be dispatched, and Boyd was brought to trial before a military court for "insulting the German defence forces." He was sentenced to a year's imprisonment. The British Government protested against the sentence, which was, indeed, an

¹ Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1137 (1).

² *The Aeroplane*, 1 September, 1915. The *Groninger Dagblad* of 15 June, 1915 (quoted in *The Aeroplane*, 23 June, 1915) stated that "the British officers who were interned at Groningen have withdrawn their parole. They will now be taken to Wierickeschans, or Urk, and interned there."

³ The Austrians shot or hanged some natives of Istria and the Trentino captured in the Italian service in the late war (see the cases of Cesare Battiste, Nazario Sauro, and Damiano Chiesa in *Diario della Guerra d'Italia*, ii. 351, 356). Czech soldiers captured while fighting in the Italian army were also executed by the Austrians (see Wedgwood Benn, *In the Side Shows*, 1919, p. 287).

absurd one, from any point of view, and, moreover, of doubtful legality, for at the moment when the words were written Boyd was not technically a prisoner. But the German authorities were adamant and Boyd was still serving his sentence, at Cologne, when the armistice came.¹

¹ See Reuter message from Amsterdam, 14 November, 1917, in *Evening News*, 19 November, 1917; *The Aeroplane*, 21 November, 1917; *Daily Mail*, 28 December, 1918, giving Boyd's own account upon his release.

CHAPTER XV.

WHITE FLAGS AND ARMISTICES.

Non-hostile relations of belligerents.—Of the various categories of belligerent non-hostile relations, those "rifts in the clouds of war"—to use T. J. Lawrence's apt description of suspensions of hostilities—flags of truce, armistices, capitulations, or conventions for surrender, safe-conducts, passports, and safeguards, only the first two present features special to air warfare. Flags of truce include, technically, white flags in the common acceptation of the latter term, and the writer deals in the later part of this chapter with the important question of the war rights of belligerent airmen when enemy troops display a white flag in face of a threatened attack from the air.

The Parlementaire.—An agent dispatched under a white flag of truce to hold communication with the enemy is known as a *parlementaire*. His rights and the procedure to be followed to ensure inviolability for him and his party are described in the Hague Land Warfare Rules and in the service manuals of most countries.¹ Legally, there is no reason why a flag of truce should not be dispatched by air.

"Aircraft," says M. Fauchille, "may be used to convey parlementaires, and will in that case be inviolable. On 9th November, 1918, when a German courier had to carry to the German General Headquarters the armistice conditions imposed on Germany by Marshal Foch, it was at first proposed, in order to save him from the risk of being fired upon in crossing the lines, to send him by air in a French aircraft, with a French pilot, and with a white flag floating behind the machine. As, however, there was a cessation of fire, this idea was abandoned, and it was by automobile that the courier, Captain Eldorff, set out for Spa by the road from Guise to Chimay." ²

¹ See Hague Land Warfare Rules, Arts. 32-34; Edmonds and Oppenheim, *Land Warfare*, §§ 224-55; American *Rules of Land Warfare*, §§ 256a-275.

² Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1440 (41). See report by Mr. F. G. Falla in the *Daily Mail*, 11 November, 1918, where it is stated that the arrangements for sending Helder [sic] by aeroplane were abandoned when it was ascertained that the apparent continuance of fire was really due to the blowing up of ammunition dumps.

The conveyance of flags of truce by air.—The difficulty in connection with the dispatch of a *parlementaire* by air is that, if he is conveyed in an aeroplane belonging to his own forces, the pilot of the machine may have opportunities of observing the military dispositions of the troops receiving him. Ordinarily, when a flag of truce arrives at an army's outposts, the *parlementaire* is blindfolded, as also are any of the accompanying party (trumpeter or bugler, flag-bearer, interpreter, horse-holder) who may cross the lines with him. Obviously the pilot could not be blindfolded, and it may be impracticable to land between the lines and to transfer the *parlementaire* to a machine belonging to the other belligerent. It could perhaps be arranged that the aeroplane carrying the *parlementaire* should follow a line and land at a place where the opportunities of observation are minimised, and one can conceive circumstances in which this method of sending a flag of truce could be employed with advantages of expedition and freedom from risk not attainable under the older system. It is possible, on the other hand, that the employment of aircraft and of wireless communication may render the resort to flags of truce rarely necessary in future wars. Belligerents have now other and newer forms of intercommunication in the shape of written messages dropped from the air and of radiographic announcements to one another. There may still be occasions—as in November, 1918—when an old-fashioned parley is essential, but such occasions should be infrequent.

The tendency to dispense with flags of truce.—It is noteworthy that the late war saw, on the western front at least, the virtual abandonment of the use of the flag of truce for a purpose for which it was commonly employed in former wars, namely, the burial of the dead and the collection of the wounded between the hostile lines.¹ It is probable that the tendency to dispense with this traditional mode of intercourse will be

¹ Lord French speaks of the flag of truce—"that symbol of civilisation and chivalry in war"—as being "practically unknown during this war with Germany" (Lord French, 1914, 1919, p. 339). The special correspondent of the United Press at Salonika, Mr. W. G. Shepherd, stated in a report of December, 1915, that, according to the statements of British officers the Turks "never refused an offer of a truce to bury the dead or pick up the wounded," in striking contrast with German practice in this matter (*Daily Mail*, 14 December, 1915). A German order of July, 1918, is stated to have contained explicit instructions that the enemy should not be allowed to collect the dead or wounded in front of the lines, under the Red Cross flag (Mr. W. Beach Thomas in the *Daily Mail*, 24 July, 1918). On the other hand, suspensions of arms were sometimes arranged in the Gallipoli peninsula for the purpose of the removal of the dead and wounded (see Sir Ian Hamilton's dispatch of 26 August, 1915).

accentuated in future wars, not, unhappily, to the advantage of humanity in arms.

Operations during negotiations for an Armistice.—It is unnecessary to suspend operations either while a flag of truce is approaching from the enemy's side or during the negotiations for an armistice. In the Hague Land Warfare Rules (Art. 33) it is expressly laid down that a commander to whom a *parlementaire* is sent is not obliged in every case to receive him; the necessity for keeping a particular movement secret may, for instance, justify the refusal to receive a flag of truce at a critical moment. In such a case the correct course is to signal the approaching party to retire, and only if they fail to do so to open fire upon them. Even if the flag of truce is received, it is perfectly legitimate and no breach of faith to continue all military movements, and if the parley is for the purpose of arranging an armistice, the same freedom of action is retained until the armistice is concluded and operative. This freedom of action is equally applicable to the air arm as to the other services. During the negotiations for an armistice between Germany and the Allies in November, 1918, air and other military operations continued unchecked. The German white-flag party had met Marshal Foch on 8 November, and the acceptance of the victor's terms was a practical certainty, yet on 9 November many air combats took place, twelve German machines being destroyed and seven driven down, while thirteen British were "missing," and on 10 November sixteen German machines were shot down, one was driven down out of control, two were destroyed by bombs as they stood in their aerodrome, and nine of our machines failed to return. In addition, on both days many important railway centres behind the German lines were attacked from the air, twenty tons of bombs being dropped by our aircraft on 10 November.

The fixing of a neutral zone for aircraft.—It is particularly necessary to provide in the conditions of an armistice for some definite aerial zone in which aircraft must not circulate, or else to make it clear beyond question how far freedom of aerial action and observation is retained by each belligerent force. Any uncertainty in regard to this matter is likely to lead to practical difficulties and may in extreme cases wreck the armistice. Since hostilities are suspended and since to advance beyond the ground line of demarcation would be an act of hostilities, it follows that the aircraft on either side must not

cross that line. The difficulty arises in regard to circulation just behind the line. Already doubt exists in regard to the action permissible to land forces behind the demarcation line. Many jurists hold that nothing may be done which, if hostilities had not been suspended, the enemy could have prevented,¹ and acceptance of this view would involve the prohibition, it is to be presumed, of aircraft activities within the range of the enemy's anti-aircraft artillery, even if also within the lines of the force to which the aircraft belonged. Other authorities dispute this contention, and consider that it is legitimate for a belligerent to carry out within his own lines all movements not definitely forbidden by the terms of the armistice convention.² The best course is unquestionably to fix an air zone closed to aircraft of both belligerents. This was done in the armistice of 15 December, 1917, between the general staffs of Germany, Austria-Hungary, Bulgaria, and Turkey on the one side, and Russia on the other; it was provided that the armistice applied to air as well as other forces, and that "aeroplanes and captive balloons must be kept out of an air zone 10 kilometres wide behind the demarcation line of each side."³

The Armistices of November, 1918.—No similar provision appears in the armistice of 3 November, 1918, between the Allies and Austria-Hungary, and of 11 November, 1918, between the Allies and Germany.⁴ These armistices were, however, abnormal; they were not, as armistices usually are, conventions *inter pares*, but were rather terms of surrender dictated

¹ See the authorities cited in Fauchille-Bonfils, *Droit Int.*, 1921, ii. §§ 1254-55, and also T. J. Lawrence (P. H. Winfield's edn.), *International Law*, 1923, p. 558.

² See Oppenheim, *Int. Law*, 1921, ii. § 237. The American *Rules of Land Warfare*, § 261 (giving a reference to the present writer's *War Rights on Land*, pp. 235-8, and Ariga, *La Guerre russo-japonaise au point de vue continental et de droit international*, p. 560) state that: "In modern practice the principle has been followed that what is not expressly prohibited is allowed. The principle 'that a belligerent must abstain from everything which the other could have prevented had there been no armistice,' is rejected by continental armies." The British Manual (*Land Warfare*, §§ 282-4) is not very clear in regard to what may be done during an armistice, for it states that "any action or movements which the enemy might have been able to prevent are forbidden," but goes on, not very logically, to say that "if an armistice is declared without conditions, nothing more than a total cessation of hostilities along the front of both positions is required." The French official *Manuel à l'Usage des Officiers de l'Armée* (p. 62) clearly supports the view that anything (short of hostilities) is permissible which is not prohibited by the conditions of the armistice.

³ Quoted in Ludendorff, *The General Staff and its Problems*, Eng. trans., 1919, ii. 519-21.

⁴ The terms of these armistices are given in White Paper Cmd. 53, of 1919, "Terms of the Armistices concluded between the Allied Governments and the Governments of Germany, Austria-Hungary, and Turkey."

by victors. They contemplated expressly an immediate evacuation by the beaten armies of their existing positions and the occupation of those positions by the Allies, and consequently the fixing of a line or zone of demarcation was not essential. Moreover, they provided for the speedy surrender of almost the whole of the equipment of the beaten forces, including expressly, in Germany's case, some 1700 aeroplanes (Art. 4 of Conditions of Armistice). Hence, air action by the surrendering forces was, in effect, out of the question, and the absence from the terms of the armistices of any provision for a "neutral" air zone is not a precedent for future and more normal conventions of the kind.

As it was, some difficulty did arise owing to the uncertainty of the position in regard to the permissible movements of aircraft on the 11 November, 1918. On that day, before the armistice (already signed) came into force, i.e. before 11 o'clock, a French two-seater, with Lieut. Pouzin as pilot and Adjutant Thabaud as observer, was ordered to mark out the front lines, the French General being anxious to know the position of his troops. This machine became lost in the fog and landed in the German lines; the two occupants were brought to a German General, who kept them in custody until next day, when they were allowed to make their way on foot to the English lines. Their machine was sent back separately upon a vehicle. The German General, before dismissing them, satisfied himself that they had "committed no act of hostilities," and that their machine-gun ammunition was unused.¹

Localised air Armistices.—A limited armistice or suspension of arms applicable only to air operations against a defined place or district is not unprecedented. An instance occurred in Macedonia in November, 1916, when the German, Austrian, Turkish, and Bulgarian Legations were expelled from Athens. The German Minister requested the British naval authorities to suspend air operations against the Drama-Kavala road for twenty-four hours from 6.45 a.m. on 25 November, in order that the women and children of the Legations might pass in safety. The commanding officer of Thasos Air Station—the authority concerned—complied with the request and also prohibited operations against Drama Station and Aerodrome until 28 November. It so happened, however, that on 25 November, before the German request was received, an air attack

¹ *La Vie aérienne*, 27 March, 1919, p. 206.

was being carried out upon Drama Aerodrome, but no bombs were dropped in or near the town, nor was the vicinity of the Station or the Drama-Kavala road attacked. Nevertheless, the incident was an unfortunate one in the circumstances. It was represented by the German Government as a breach of international law, a suggestion which the Vice-Admiral commanding, Eastern Mediterranean, strongly repudiated.¹

Another special air armistice was arranged on the western front in May, 1918. The 30th of that month was Corpus Christi Day, when processions take place in Roman Catholic centres, and a request was addressed by the Vatican to the British Government that there should be a suspension of air attacks on that day upon cities not in the immediate vicinity of the battle front. The British Government consented on religious and humane grounds.² The arrangement was not reciprocal and no stipulation was made for a corresponding cessation of German attacks. The German long-range gun bombarded Paris as usual on the feast day³—a characteristic manifestation of German psychology which, as Mr. Bonar Law stated in the House of Commons on 3 June, 1918, was hardly calculated to encourage acceptance of similar requests in the future.

Visit and capture during Armistices.—The question whether the right to visit and capture merchant vessels continues during an armistice is one upon which jurists differ, and the law of air warfare upon the subject must also be regarded as unsettled. The better view is that the right of visit, at any rate, subsists notwithstanding the suspension of operations.⁴ If that right continues, it is illogical to deny the continuance of the right of capture in cases where visit and search have disclosed grounds justifying condemnation. The question is, however, so much the subject of dispute, that it is preferable to include in the terms of an armistice express provisions upon the point. The armistices of 3 November and 11 November, 1918, between the Allies and the Central Powers, allowed capture, subject in the former case to certain exceptions.⁵ In

¹ Admiralty *communiqué*, *Times*, 4 January, 1917.

² British official *communiqué*, 29 May, 1918. The action of the Government in consenting was severely criticised in the press on the ground that it would allow the Germans to move their aircraft stationed at Cologne into the battle sector at Rheims on the day in question (*Daily Mail*, 30 May, 1918).

³ See Maurice Thiéry, *Paris Bombardé*, 1921, p. 230.

⁴ Oppenheim, *Int. Law*, 1921, ii. § 415.

⁵ See Art. 5 of the "Naval Conditions" of the Armistice of 3 November, 1918, and Art. 26 of that of 11 November, 1918, both of which Articles provided that the

future armistices it will probably be necessary also to provide for visit and capture by aircraft and of aircraft ; the provisions will be a matter for special arrangement between the belligerents concerned.

The white flag of surrender.—The most difficult question which arises in regard to the subject-matter of this chapter is that relating to the action of attacking airmen when a white flag is displayed by troops, whom they are bombing or machine-gunning. Should they suspend attack or should they ignore the white flag ? The answer must depend on the circumstances of each case.

It must first be made clear that there is nothing "sacred" about a white flag, as such ; it is "sacred" only when used in the circumstances contemplated by the law and custom of war relating to flags of truce. "Since time immemorial," it is stated in the British official Manual on *Land Warfare*,¹ "a white flag has been used as a signal by an armed force which wishes to open communication with the enemy. This is the only signification that the flag possesses in International Law. The hoisting of a white flag, therefore, means in itself nothing else than that the one party is asked whether it will receive a communication from the other." Its hoisting cannot be held to have the magic and instant effect of stopping an attack ; if it had, the way would at once be open to any fleeing army to save itself from disaster by a ruse which it could easily reconcile with its conscience and its necessities. The flag may be displayed by a few members of the beaten force ; it may be unauthorised by the commander ; the attacking force may speedily be disillusioned if it ceases fire and proceeds to accept the supposed surrender. No doubt it will often happen, in land fighting, that the attacking force is in a position to verify the genuineness of the implied surrender and that military necessity will not preclude the giving of quarter when a retreating column displays a white flag and shows, by suspending its retreat, that it is, in fact, desirous of capitulating. But even in land warfare, there are circumstances in which the stern

existing blockade conditions were to remain unchanged and that Austrian and German merchant ships at sea remained liable to capture. See also Fauchille-Bonfils, *Droit Int.*, 1921, § 1395 (70), where the provisions of these and certain other armistices upon the subject of capture are given and the general question is discussed. Since a blockade subsists during an armistice (see Fauchille-Bonfils, *loc. cit.*), aircraft seeking to enter or leave a blockaded port would be liable to condemnation on the ground of breach of blockade, independently of other reasons.

¹ § 229.

necessity of war sometimes makes it impossible to recognise the white flag.¹

Attacking airmen and the white flag.—In air operations against a retreating foe the difficulties are still greater. Now and again in exceptional circumstances it may be possible for airmen to take or secure the surrender of ground troops. A few cases of the kind occurred in the great war. The most remarkable was one which is graphically described by Capt. Bott. He states :—

“ The star turn last year was performed by a British machine that captured a trench. The pilot guided it above the said trench for some hundred yards, while the observer emptied drum after drum of ammunition at the crouching Germans. A headlong scramble was followed by the appearance of an irregular line of white billowings. The enemy were waving handkerchiefs and strips of material in token of surrender. Whereupon our infantry were signalled to take possession, which they did. Don't shrug your shoulders, friend the reader, and say : ‘ Quite a good story, but tall, very tall.’ The facts were related in the R.F.C. section of ‘ Comic Cuts,’ otherwise G.H.Q. summary of work.”²

The incident is, moreover, recorded in Sir Douglas Haig's dispatch of 23 December, 1916, where it is stated to have occurred at Gueudecourt, on 29 September, 1916.

Another case was unofficially reported in September, 1918. A trench full of fifty-six Germans hoisted a white handkerchief, and surrendered to a British pilot, who ordered them out of the trench ; they appear to have obeyed and to have made their way to the British lines.³ A still more considerable haul of prisoners is stated by Mr. W. T. Massey to have been made in Palestine in October, 1918. He states :—

“ Aeroplanes south of Ammon secured the surrender of 2000 Turks. A pilot, catching sight of a long-drawn-out column, dropped a message saying that if they did not surrender they would be bombed. He returned to his aerodrome with no answer. Six machines then went up with bombs. While they were circling over the troops a ground signal was laid out recalling them. The Turks raised the white flag and came in to be taken prisoners.”⁴

Suspension of attack normally impracticable.—Such cases are, however, exceptional. Usually it is impossible for attack-

¹ See the writer's *War Rights on Land*, pp. 92-5 ; T. Baty, *International Law in S. Africa*, 1900, p. 80 ; Westlake, *International Law*, 1907, ii. 75.

² “ Contact ” (Capt. A. Bott), *An Airman's Outings*, 1917, p. 195. See also C. C. Turner, *The Struggle in the Air, 1914-1918*, p. 227, and Mr. Beach Thomas's account in the *Daily Mail* of 9 October, 1916. Sir D. Haig's dispatch referred to appeared in the *London Gazette*, 29 December, 1916.

³ See *The Aeroplane*, 25 September, 1918.

⁴ Quoted in E. Middleton, *The Great War in the Air*, iv. 190.

ing airmen to take ground troops prisoners, and such a situation as that described by Lieut.-Col. Tennant as arising in Iraq in February, 1917, is probably more typical and normal than the cases quoted above. Lieut.-Col. Tennant describes how in the Turkish retreat towards Azizieh, after the forcing by General Maude's army of the Shumran Bend in the Tigris on 23 February, 1917, "many of the waggons had hoisted the white flag," while some of the flying Turks "waved in token of surrender," when the British aeroplanes attacked them with machine-guns. "Flying along about 10 feet from the road I mowed down seven with one burst of machine-gun fire." In such circumstances it is impossible to recognise the white flag. To try to do so would be to sacrifice the advantage of the destruction of a routed and demoralised foe.¹

Cases in which aircraft should discontinue attack.—One must, however, add that a situation is conceivable in which it would be inhumane to continue to fire upon or bomb a party of the enemy who have hoisted the white flag (or its equivalent), but whose immediate surrender cannot be effectively secured by the calling up of ground forces of the attacking pilots' service. Suppose, for instance, that a body of troops display a white flag, suspend their retreat, and show unmistakably as a whole body that they are genuinely ready to give in. To continue to attack them in such circumstances might be held to approach the cold-blooded slaughter of defenceless men. The modern custom of war condemns as barbarity such an act as that of Napoleon at Jaffa, when he executed between 2500 and 3000 Turkish prisoners whom the French had captured, but, their own provisions being scarce, they were unable to keep and feed.²

In the Boer War of 1899-1902, the Boers released again and again British troops whom they had captured but could not carry away. It is true that in the kind of (air) attack now under consideration, the enemy have not in fact been made prisoners, but the circumstances are not altogether dissimilar from those in which the raiding Boer horsemen operated in the South African War, at any rate, during its last two years. A humane fighter will at least hesitate to kill an enemy, or an enemy group, whose resistance and retreat are clearly at an end, even if there is no effective means of capturing them. The case is well differentiated from that in which a white flag

¹ J. E. Tennant, *In the Clouds above Baghdad*, p. 89.

² See Holland Rose, *Life of Napoleon*, i. 203-4.

is hoisted by an individual or by a few individuals in a force which continues its retreat, and which cannot safely be assumed to be a consenting party, as a whole, to the act which indicates a wish to surrender on the part of one or two of its constituents. There is a real difference—whether it is a logical one or not—between killing men in the *chaud-medley* of a continuing retreat and pursuit, and killing men who are plainly “out of the fight” and are not actually prisoners, simply because there are no troops at hand to take their surrender. Whatever be the strict legal position, *ex gratia* and by the custom of war men who stand defenceless, waiting for death, are spared.

CHAPTER XVI.

AIRCRAFT AND ENEMY POPULATIONS.

Belligerents and enemy civilians.—The mutual relations of belligerent and enemy civilian populations, when brought directly into contact with one another, are affected, chiefly, in the two following ways—if one excludes the special question of air bombardment—by the application of aviation to military uses. First, a raiding airman may descend for one reason or another in the midst of an enemy population, and the question of his war rights in such a situation has to be considered. Secondly, enemy territory may be “occupied,” in the technical sense hereafter explained, by a belligerent’s air forces, who will replace the mobile columns of ground troops often used in the past for the purpose of asserting the belligerent’s *de facto* authority. A subsidiary question which may arise is that—distinct from the first one above—of the relation under international law of the inhabitants of an occupied territory to airmen of their own national forces, or allied forces, who may descend in such territory.

The existing international law.—It is necessary to review in these matters the international law at present existing.¹ The situation is a novel one. Hitherto belligerent forces have been brought into direct relation with peaceful enemy populations (bombardment by (say) a naval force being again ignored) only where there has been an actual invasion of the soil of the enemy country. Since the invaders have been armed, numerous and organised, and the inhabitants have been neither the first nor the last, the former have normally been able to exert their authority by the mere show of power. When the inhabitants have offered armed resistance—as at Bazeilles in 1870, and as at Louvain, Termonde, etc., in 1914—they have been drastically

¹ A concise and admirable statement of the existing international law upon this subject may be found in Prof. Pearce Higgins’s *Non-Combatants and the War*, 1914.

punished. The invaders have been the dominant party, able and ready to enforce their rights by an adequate sanction.

The circumstances now to be considered are quite different. Not an army with banners, a Cæsar with his legions, but a single raiding airman is the "invader"—a stranger in the land, and an enemy stranger at that. What are his war rights in these circumstances?

The principles underlying the law.—The answer must be found in the application to the new circumstances of the two broad principles upon which the war rights of armed forces *vis-à-vis* enemy civilian populations are based. The first is the principle of "combatant trade-unionism," if one may so term it, which confines the right to engage in hostilities to the authorised combatant *personnel* of a belligerent country. (The exceptional case of the *levée en masse*, hereafter referred to, may be ignored for the present.) The second is the principle of, broadly, civilian immunity from warlike attack, subject always to the provisos that, on the one hand, the civilian remains a civilian; on the other, that that immunity is by no means a charter entitling him to carry on his business and ordinary activities as if profound peace still reigned, but is qualified by certain important obligations to the invader or occupant. Foremost among these obligations is the liability to have his services or his goods or money requisitioned for the enemy's purposes, provided that the demand does not involve the compulsion to take part in military operations against his own country.¹

An inhabitant is further relieved specifically from the liability to be forced to furnish to the occupying belligerent any information about the army of the other belligerent or about its means of defence.²

The war rights of the isolated pilot.—These principles apply, the writer submits, in the absence of any rebutting custom of war, to the new circumstances. The existing rules were framed, of course, to meet conditions not altogether the same as those now in question. They assumed the presence of invading forces whose sojourn was less fleeting than that of the raiding or reconnoitring pilot. They refer, moreover, to *occupation* of enemy territory, and the pilot can scarcely be

¹ Art. 52, Land Warfare Rules, The Hague, 1907.

² Art. 44, Land Warfare Rules, The Hague, 1907. Austria-Hungary, Germany, Russia, Japan, Bulgaria, Roumania, and Montenegro made reservations in regard to this Article.

held to be "in occupation." That difficulty, however, is not an important one, for any place of which an invader is actually in possession, or in which he is physically present, must be regarded as occupied by him. It is only in regard to places which he does not actually hold but claims to "occupy" in virtue of his possession of some other part of the same district, that the difference between the rights of an occupant and the rights of a mere invader arises.¹ The fact that the invader comes alone and not at the head of a body of troops appears to the writer to be immaterial, provided that he is in fact able to overawe the inhabitants by the menace of warlike action, and to deal out retribution if they disregard that menace. He is entitled, it is submitted, to exercise the war right of requisition. He is entitled equally to demand that, like every member of a belligerent's armed and uniformed fighting forces, he shall be opposed only by the armed and uniformed fighting forces of the enemy.

The right of requisition.—Take first, the case of requisition. Suppose the airman lands in order to obtain some essential supply, and that he is prepared to conform with the ordinary rule that he either pays cash for what he requisitions or gives a receipt for it. He is met with a refusal. How can he enforce his demand? The writer submits that he is entitled to take with the strong hand what he wants. If he is resisted he is justified in persisting and in defending himself personally, even to the point, if necessary, of wounding, or possibly killing, his opponents. Such an eventuality is only the consequence of his performing an act which cannot be considered illegitimate, and, *ex hypothesi*, a consequence which he would have avoided if possible. If the airman were accompanied by other pilots, who remained in the air while he landed, those pilots would be justified in defending their comrade by bombing or machine-gunning the inhabitants who attacked him; but they would not be justified, it is submitted, in dropping bombs or firing in punishment for the inhabitants' refusal to furnish the required supplies.

It might, indeed, be argued that the airman has a right of a less passive nature than that claimed, namely, that he has the right to shoot the inhabitant as a punishment for the refusal to comply with the requisition. Oppenheim states² that means of force may be applied against private enemy

¹ See Oppenheim, *International Law*, 1921, ii. § 167.

² *Op. cit.*, § 116.

persons for the purpose of securing compliance with requisitions and contributions, and that "there is no doubt that, if necessary, capital punishment and imprisonment are lawful means for these purposes." But "capital punishment" implies legal process of some kind, and that is here out of the question.¹ To wound or kill an inhabitant, not in the course of an endeavour to take the supply requisitioned and to that extent in self-defence, but as a punishment for his refusal, would be, the writer submits, an act which could not be justified under the laws of war.

The obtaining of information.—Take, again, the case in which an airman, having lost his way, lands in enemy territory and inquires of a local peasant the direction to a named place. The man refuses to answer. The pilot threatens to shoot him if he will not tell, and, the man being still silent, carries out his threat. Here, again, the writer contends that the pilot would be exceeding his war rights in wounding or killing the peasant. His action would be still more grossly illegitimate if the question which he asked related to the direction of, say, an enemy aerodrome which he was proposing to attack; for then it would amount to compelling the man to give information in regard to his country's forces, in violation of the rule upon this subject already referred to.

The requisitioning of aids to escape.—The fact that the airman had crashed in landing and was trying to escape on foot would not affect the legal position. It would be equally illegitimate for him to shoot a civilian who refused to furnish him with a civilian suit or some other disguise to facilitate escape.² But the airman would, it is submitted, be within his rights in taking the clothing which he wanted and in defending himself if he were attacked while doing so.

Civilian attack on enemy airmen.—So far the airman has been assumed to be the originator of the conflict with the local citizens. It may happen that, having landed, he is attacked

¹ But a summary trial and condemnation would not, perhaps, be out of the question in analogous cases that are conceivable, as where a number of aircraft had landed and time allowed of the holding of a military court and the necessary formalities. As to the necessity for a trial before an inhabitant is executed, see Edmonds and Oppenheim, *Land Warfare*, § 37.

² E. Middleton (*The Great War in the Air*, ii. 224) states (but does not quote his authority) that an Austrian seaplane, with two officers, was brought down near Susegana in Italy in 1916, and that the occupants, having destroyed their machine, tried to escape across country, entering houses here and there, and threatening the inhabitants with revolvers, in order to obtain civilian disguises. They were eventually captured by Italian troops.

without provocation or is surrounded by civilians who try to seize him. What is the legal position in such circumstances? Some interesting correspondence appeared in the press upon this question during the late war.

The legal position.—A correspondent having inquired in the *Daily Mail* of 19 June, 1917, whether, if a "Hun airman" with engine trouble, descended in this country, it would be legitimate for (a) a civilian, (b) a soldier, to shoot him, another correspondent, "King's Counsel," replied as follows in the same paper the next day :—

"With regard to *English law*, theoretically any soldier may at any time, when England is at war, kill an enemy of the King. If a superior officer is present, the soldier must wait for a command. The civilian's position appears to me to be the same as the soldier's [i.e. as regards *English law*]. The enemy airman is outside the King's protection, and the civilian therefore could not commit murder. His proper course is to arrest the airman. If the airman resists and threatens to damage the civilian's property or life, the civilian is entitled to kill. By *international law* belligerent parties only recognise the uniforms of the States actually fighting. If, and when, the Germans get possession of this country, they might shoot the civilian as a *franc-tireur*. He must take the risk. If the German were calling 'Kamerad,' the soldier or civilian would have to incur the odium of his fellows if he shot him."¹

This may be taken as a correct statement of the legal position. A belligerent military airman, like every other member of a recognised belligerent force, is entitled to demand that he shall be subject to attack only by recognisable combatant *personnel*. He cannot be at the mercy of amateur hedge-row fighters. It is on the assumption that civilians are really civilians that they are relieved, as far as possible, of liability to direct warlike attack. Under domestic or national law they may be doing no wrong in firing upon an enemy airmen; under the laws of war they are committing an offence and are liable to severe penalties if the turn of events places them in a situation in which they can be brought to account. When Count Reventlow denounced the "treachery" of the English civilians who fired—with revolvers!—at raiding German airships,² one must admit that his complaint, although displaying

¹ A case in which French workmen killed a German pilot who landed outside Paris on 8 September, 1914, is given by Maurice Thiéry, *Paris Bombardé*, p. 7, but the German appears to have fired upon the workmen first.

² See Buchan, *History of the Great War*, ii. 472, footnote. Two men were fined in the police courts on 9 September, 1915, for firing revolvers at a German airship which was raiding England. See *Pall Mall Gazette*, 9 September, 1915. Civilians also fired revolvers in the streets of Paris at German aircraft flying over the city. See *La Guerre aérienne*, 14 February, 1918, p. 232.

an absurd lack of perspective in taking such futile efforts seriously, had, in truth, some theoretical or legal foundation, for the persons who relieved their feelings in this manner, were technically offenders against the laws of war.

The *levée en masse*.—There is only one exception to the rule which forbids civilians to take part in hostilities. This exceptional case is that of the *levée en masse*. If, on the approach of an enemy, the inhabitants of a territory not yet occupied "spontaneously take up arms to resist the invading troops without having had time to organise themselves" in accordance with the rules applicable to army, militia, and volunteer forces, they are regarded as belligerents if they carry arms openly and respect the laws and customs of war.¹ But this concession is only made to bodies of inhabitants, in fact, to a *massed* rising; it is not applicable to a few inhabitants who suddenly attack an isolated enemy soldier or airman. The civilians to whom the rule in regard to *levées en masse* grants combatant privileges are, in fact, armies, regiments, or corps of un-uniformed civilians, definitely and, for the time, irrevocably separated from the ordinary population; not individuals who suddenly take on the character of fighters and as suddenly discard it again.

Civilians not entitled to attack or capture enemy airmen.—When civilians, not constituting a *levée en masse*, attack an enemy airman, or when they surround and try to capture him,² or prevent him from destroying his machine,³ they are unquestionably illegitimate combatants. Their being so is not a matter of merely academic importance, or one that would become of practical moment only in the not very probable event of the subsequent occupation of the scene by an enemy force. It may be of immediate and disastrous consequence to the town or village concerned, for, if the enemy has evidence of what has happened, he may retaliate by bomb-dropping. It is a different matter if enemy airmen voluntarily surrender to civilians; the latter cannot be regarded as acting illegitimately in accepting the surrender offered.⁴

¹ Art. 2, *Land Warfare Rules*, The Hague, 1907.

² A German aeroplane and its two occupants, having lost its way and landed near Saint-André in the Eure, in January, 1917, were captured by a *cultivateur*. See Mortane, *Histoire illustrée de la Guerre aérienne*, i. 222.

³ The crew of the German airship L. 49, which was brought down in France on the night of 19-20 October, 1917, were prevented by civilians from destroying it (*The Times*, 23 October, 1917).

⁴ The crew of the German airship L. 45 are stated to have surrendered to a French farmer's wife. See *Daily Mail*, 23 October, 1917. The occupants of a

The unfortunate position of the citizen.—The position of the citizen in the matter is not an enviable one. Patriotism, reinforced quite possibly by a definite obligation under the domestic law, may impel him to seize or kill the enemy pilot who comes down in the course of a raid. The law of war, on the other hand, condemns him if he does so and justifies the enemy, if he learns of the incident, in resorting to reprisals, perhaps in the form of bombs dropped on the citizen's village. He is, of course, also liable to be shot by the airman whom he tries to seize. In a *citation* of an Italian pilot, Capt. Ercole, who escaped from Austrian territory after a forced landing, it is stated that he killed *un indigeno* who tried to seize him.¹ Under the law of war he did no wrong in killing the man, whose attempt to prevent the airman's escape was a hostile act and rendered the civilian as liable to be shot down as if he had been a soldier.

Inhabitants of occupied territory and their State's airmen.—Especially unfortunate is the situation of the inhabitants of territory in the enemy's military occupation. Their sympathies are naturally enlisted on the side of the airman of their country's forces, or of its Allies' forces, who lands in the occupied territory, and their inclination will naturally be to help or to hide him. But if they do so they make themselves liable to be drastically punished by the occupying belligerent. They become in his eyes "war traitors" and as such may, in extreme cases, be condemned and shot. In the great war, the Germans punished with great severity Belgian citizens who concealed or assisted Allied airmen.² Where the circumstances were such as in their opinion to aggravate the offence, they executed the civilian implicated. Thus a tradesman of Lille, Camille Eugène Jacquet, was executed on 22 September, 1915, for having concealed French and British soldiers and helped them to escape.³ The most serious charge against him related to the harbouring of Lieut. G. W. Mapplebeck, an English airman who had been shot down and was supplied by Jacquet

Gotha aeroplane which was brought down in England on 6 December, 1917, gave themselves up to a vicar, who was also a special constable (not, of course, a combatant). See the *Evening News*, 6 December, 1917.

¹ *Diario della Guerra d'Italia*, ii. 629.

² Thus it was reported from Brussels that a court-martial on 12 November, 1915, sentenced fifteen persons, including five women, to periods of imprisonment varying from 2½ to 15 years, for hiding and assisting French aviators to escape. See *The Aeroplane*, 8 December, 1915.

³ See the *Pall Mall Gazette*, 12 February, 1916, quoting the *Paris Matin*.

with disguise and money to enable him to escape to England.¹ In this case the German authorities in Lille, knowing that the English officer, with a companion, must be in hiding in the town, had put up posters, offering a cash reward for information leading to their capture and threatening the death penalty to any persons harbouring or concealing them.²

If the inhabitant of an occupied district signals to his national aircraft or conveys information to them in any way, he is chargeable with "war treason." Even the possession of wireless telegraphic or telephonic apparatus is usually an offence under martial law and the use of it may be punishable with death.³ The transmission of military information may take various forms. It was reported in April, 1916, that a particular battery in Belgium was accurately shelled by the Germans until their means of locating it was discovered; it was found that a ploughman was engaged in marking "V"-shaped furrows pointing to the battery, and these furrows were observed by a Taube flying overhead.⁴ The inhabitants of Brussels were accused in a proclamation issued by Von Bissing in the autumn of 1915 of giving information to the Allied airmen of the location of buildings in which German troops were housed and were warned that if the attacks continued, German soldiers would be quartered in the citizens' houses.⁵ If the accusation was true, the penalty was extraordinarily mild.

Inhabitants of occupied districts and the occupant's air forces.—The inhabitants of a country in the enemy's military

¹ *The Times*, 18 February, 1916; C. C. Turner, *The Struggle in the Air, 1914-1918*, p. 28. Capt. Mapplebeck was afterwards killed in a flying accident. See *The Aeroplane*, 1 September, 1915. See also *Flight*, 17 February, 1916. In the Notice (*Avis*) which the Germans posted in Lille on 22 September, 1915, and which is reproduced by I. Malcolm (*Scraps of Paper*, 1916, pp. 26-7), stating that Jacquet and three other inhabitants had been shot that day for sheltering the English aviator who alighted on 11 March and for helping him and enemy soldiers to escape, it is stated that the cases were regarded as "espionage": a strange extension of that term, for the more natural charge would undoubtedly have been war treason.

² See *The Aeroplane*, 21 March, 1915.

³ *The Echo Belge*, Amsterdam, reported on 13 October, 1916, that at Charleroi three inhabitants had been shot for using W.T. apparatus. See *Evening Standard*, 13 October, 1916.

⁴ Report by Mr. A. R. Williams in the *Evening Standard*, quoted in *The Aeroplane*, 3 May, 1916. A case in which a "shepherd" followed about a battery with his flock of sheep in order to disclose its position to an enemy airman is recorded by Major A. Corbett-Smith, *The Marne and After*, 1917, p. 139; and yet another, in which a French peasant and his cattle figured and of which a German battery was the intended victim, is recorded by Sven Hedin (*With the German Armies in the West*, 1915, p. 328).

⁵ See *Pall Mall Gazette*, 25 October, 1915.

occupation may be placed in peril of their lives for another reason connected with aviation. What this is may be seen from a proclamation posted in the Belgian villages immediately upon the German invasion in August, 1914, threatening, *inter alia*, that,

"Chaque personne qui s'approchera d'une place d'atterrissage d'aéroplanes ou de ballons jusqu'à 200 mètres sera fusillée sur place."¹

It need hardly be stated that any attempt by the dwellers in an occupied territory to kill or injure isolated airmen or other members of the occupying forces is war treason and as such entails upon conviction the capital or any less penalty.² Acts of sabotage, such as the secret damaging of an aircraft to which by some means or other an inhabitant has obtained access, would be equally punishable.

Military occupation.—The employment of aircraft with armies may revive in an intensified form a difficulty which arose at the time of the German occupation of French territory in the war of 1870-71. The Germans then claimed to be in occupation of the whole extent of each French canton if at any point within it formal notice of occupation had been given. Since the average size of a canton was 72 square miles, the result of the German claim was that very large areas were subjected to a fictitious or (as it was called) "constructive" occupation which was not supported by any adequate forces of occupying troops.³ It was in consequence of the excessive claim then made that at The Hague Conference of 1899 it was agreed, and this agreement was confirmed by the second Conference in 1907, that "constructive" occupation should be banned. Art. 42 of the Land Warfare Rules, 1907, lays down the rule that:—

"Territory is considered occupied when actually placed under the authority of a hostile army. The occupation extends only to the territories where such authority has been established and is in a position to assert itself."

The importance of the distinction between territory which is "occupied" and that which is not lies in this, that, if there

¹ Quoted by Brand Whitlock, *Belgium under the German Occupation*, 1919, i. 150.

² The penalty for war treason is generally death, but whenever there are extenuating circumstances a less penalty is inflicted (see Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1154).

³ See W. E. Hall, *International Law*, 1917, § 161; Westlake, *International Law*, 1907, ii. 84.

is occupation, the inhabitants of the district owe to the enemy authorities a duty of quiescence and obedience which amounts to something approaching temporary allegiance. The question, it should be clearly understood, is not in regard to the difference between *invasion* and *occupation*; that difference is immaterial for the present purpose, and in any case the rights and duties of an "invader" and of an "occupant" are the same where troops are actually present.¹ The point of importance is that a given place which is on the border line of an "occupied" area comes under a different *régime* and its residents acquire a different (though temporary) *status* if it is regarded as being, in fact, within the occupied area.

The border-line case.—If it is outside the area of occupation, its position is not dissimilar from that of any other place in the same dominions. If, however, it is inside the area of occupation, it is subject to the martial law of the occupying belligerent. In the former case the inhabitants retain in full their rights and duties as citizens of their State and they cannot be penalised by the other belligerent for acts for which, in the latter case, he would be justified in inflicting severe repressive penalties. A district which is regarded as in enemy occupation lies under the constant menace of a watchful and merciless master. If its inhabitants serve their national forces as guides or furnish them with information, they are liable to be arraigned for war treason. They are laid under the necessity of walking circumspectly wherever any possibility of their interfering, even indirectly, with hostilities may be suspected. In all that they do they are playing with fire. Moreover, they must pay their taxes, and may have to furnish war contributions, to the occupying power. For the time, in fact, the enemy State becomes their task-master and tax-collector.

The test of occupation.—Hence the importance of determining whether a town or district on the fringe of a territory in the enemy's military occupation is within that territory or not. The rule approved at The Hague in 1899 and 1907 confines the radius of occupation to territories in which the enemy has established and is in a position to assert his authority.

¹ In the report made by M. Édouard Rolin to the Hague Conference of 1899, it was stated that "all the Articles (Arts. 42-56) comprised in Section III (Military Authority over Hostile Territory) apply *a fortiori* to the invader, although there is not, as yet, *occupation*" (Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1141, quoting from *Actes de la Conférence de 1899*). But there may be an increase in the *stringency* in the martial law applied under occupation, in comparison with that applied during invasion (see Westlake, *Int. Law*, 1907, ii. 89).

The provision is not an altogether satisfactory one, and many variants have been suggested in its place,¹ not, perhaps, with much greater success; but the intention at any rate is clear, namely, that occupation is a question of fact.² A place is occupied if the *de facto* ruler is the enemy. How he maintains his control over it is immaterial, provided that control does, in fact, exist. He need not garrison every square mile of the territory concerned. His authority may be exercised by mobile columns moving from some central point, and if that authority is really effective, then the whole area over which it extends must be regarded as occupied.

Air forces and occupation.—Now it is almost certain that in future wars the control which has in the past been maintained by mobile columns will be maintained by air forces. Such forces are the ideal instrument for the purpose. In the late war, and since its termination, the effectiveness of the air arm in this respect was clearly demonstrated. After the capture of Baghdad in March, 1917, the turbulent Arab tribes, especially those along the Euphrates and the Diala, were policed by aircraft patrols. "If a tribe got out of hand, a raid could leave the next morning and bomb and machine-gun any village within a 100-mile radius."³ It is common knowledge that since the war enormous areas in Iraq have been effectively controlled by Royal Air Force squadrons which have eliminated the need for local garrisons.⁴ The employment of the air arm must result in an unprecedented enlargement of the radius of effective military occupation.

The possible difficulties.—If the control is really effective, the occupation which air forces maintain must be recognised as differing from that hitherto imposed by cavalry or other

¹ W. E. Hall, for instance, would regard a territory as occupied "as soon as local resistance to the actual presence of an enemy has ceased," and would treat the occupation as continuing "so long as the enemy's army is on the spot, or so long as it covers it, unless the operations of the national or an allied army, or local insurrection, have re-established the public exercise of the legitimate sovereign authority" (*Int. Law*, § 161). M. Fauchille-Bonfils (*Droit. Int.*, 1921, ii. § 1162) lay it down that: "*occupatio bellica* exists only where these two conditions are fulfilled: (1) the legal government must be prevented by the invader's act from publicly exercising its authority; (2) the invader must be in a position to substitute for that authority his own." See also T. J. Lawrence (P. H. Winfield's edn.), *Int. Law*, 1923, pp. 411-12.

² See Oppenheim, *Int. Law*, ii. § 167.

³ J. E. Tennant, *In the Clouds above Baghdad*, p. 163.

⁴ See a paper by Wing-Commander J. A. Chamier on "The Use of Air Force for Replacing Military Garrisons," in *Journal of Royal United Service Institution*, February November, 1921, pp. 205-12.

ground troops only in its greater extent. But will it be effective? The occupying belligerent's air forces may be opposed by those of the other belligerent. Both air forces may—and almost certainly will—be operating from bases at a considerable distance. The occupying belligerent may have established his authority, posted up proclamations, etc., at a given point in the territory in question; no enemy ground troops may be left in the district; but the enemy's air forces may be able to dispute with those of the occupying belligerent the mastery of, at any rate, the air above the place. Difficult questions in regard to the effectiveness of the occupation in such circumstances may obviously arise.

Not only may there be a tendency, because of the mobility of aircraft patrols, to extend unduly the nominally occupied area, and to revive, in a new form, the old fictitious or constructive occupations; there will also be, in all probability, cases in which there is no real "occupation," as hitherto understood, by either of the belligerents. The same shifting of the scene of defence from the ground to the air which has made it necessary to reconsider the old criterion of the legitimacy of bombardment will probably render obsolete the existing rules in regard to the effectiveness of military occupation. It is conceivable that belligerents may leave undefended by ground troops towns and districts which would otherwise "draw" the enemy's fire from the air. The position of such places in relation to their national and the enemy's forces and authority will be an indeterminate one. The old, practical test of the presence of the troops of one of the belligerents, or of the frequent visitation of the place by ground troops, will no longer be applicable. No ground troops of either side may show themselves at all, and the sole visible sign of belligerent mastery may be the circulation, and perhaps the occasional landing, of aircraft.

The problem is one which cannot be dealt with adequately until the actual situation that will exist can be more clearly foreseen. Its nature and magnitude will depend on whether ground defences are in future to be localised and sporadic, or whether it will be the policy of governments to concentrate upon the defence of a limited number of important points—their capital cities, the more important munition towns, military stations, aerodromes, docks—and to leave the rest of the country undefended. It will clearly be impossible to defend every part of a country from air attack; the anti-aircraft defences

would not "go round." But if great extents of country are virtually abandoned, if rich provinces are left lying open, what an opportunity there will be for the future Bluchers of the air—*Was für Plunder!*—to seize and "occupy" them. One is tempted to explore the question, but it would be premature at present to do so. One must wait until air power has found itself and declared itself before one can lay down rules to govern the occupation of country by air forces. All that one can say at present is that the existing rules will almost certainly require to be reconsidered and revised.

CHAPTER XVII.

ENEMY CIVIL AIRCRAFT.

The questions to be considered.—There are three questions which it is necessary to consider under the head of the mutual relations of belligerents and enemy civil aircraft, that is, all enemy aircraft other than combatant aircraft. The first is the question whether such aircraft, and more especially private aircraft, are subject to capture and confiscation, as are enemy merchant vessels, or whether they are to be treated like private property on land and, as such, exempted from appropriation by a belligerent. The second is the question whether, and in what circumstances, they may be fired upon or otherwise endangered by deliberate warlike action during their flight. The third is the question of the position of their crews and passengers in regard to capture or detention by the belligerent into whose hands the aircraft falls. This last question is the subject of a separate chapter, which deals also with the treatment of the crews and passengers of neutral aircraft.

Non-military aircraft include aircraft employed on some public service other than military, e.g. posts, customs, police, forestry, surveying, fishery control, etc. Aircraft employed on such services are liable to confiscation as being in direct State employment. It is in regard to aircraft registered and employed as private aircraft that the question arises whether the rule of maritime or that of land warfare should be applied.

The treatment of enemy private aircraft.—*Primâ facie* and preferably the land warfare rule ought to be adopted, as being that consonant with the more enlightened modern principles governing the relations of belligerents and enemy property-owners. It is true that at sea the old rule of confiscation still holds good in the main, but to many statesmen and jurists it presents itself to-day as an anachronism and an injustice. One starts naturally with a prepossession in favour of the immunity of private aircraft from confiscation; yet,

when one has weighed the arguments, one is forced reluctantly to the conclusion that the case for treating private aircraft like private property on land is not a strong one.

The arguments for capture at sea.—The well-known arguments which have been adduced in support of the maritime rule will be applicable in increasing degree to aircraft as air traffic grows and the conditions of the air transport of passengers and goods approach those of seaborne commerce. Briefly capitulated they are: that the circumstances of land and sea warfare are fundamentally different; that the right of capture at sea is the corresponding right to that of military occupation on land; that without it maritime powers would be placed in a position of unjustifiable inferiority as compared with strong land powers in the use of means for exerting pressure upon an enemy; that the withdrawal of the right would, inevitably, drive maritime powers to extend and stiffen their war rights of other kinds, such as those relating to blockade, contraband, unneutral service, and the destruction of property on the plea of military necessity; that shipping is at sea very much what railways are on land and that railways are subject to seizure by an enemy; that it differs from ordinary private property in being owned by corporations and companies, not by individuals, and that it is normally insured against war risks, often under a Government scheme; that the hardship resulting from capture is thus spread and mitigated, whereas the incidence of capture of private property on land is upon the individual; that in any case private property on land is liable to be destroyed, without any right to compensation arising, in consequence of *faits de guerre* or of military necessity; that it is also subject indirectly to confiscation in the shape of the war contributions to which its owners are liable in proportion to their means; that the loss which land operations inflict upon property-owners is far graver than that which capture at sea inflicts upon shipping companies and shipowners; that sea commerce is an important and often a vital constituent of a nation's capacity to carry on a war, and its vehicle—the merchant ship—differs in this respect from the mass of private property on land.¹

¹ See A. Latifi, *Effects of War on Property*, 1909, pp. 122-30; Fauchille-Bonfils, *Droit Int.*, 1921, ii. §§ 1346-79 (1); Westlake, *Int. Law*, 1907, ii. pp. 131-2; W. E. Hall, *Int. Law*, 1917, § 147; and for the voting at The Hague in 1907 upon the American proposal for the absolute immunity of private property at sea, and upon the Belgian proposal for the sequestration of such property, see A. Pearce Higgins, *The Hague Peace Conferences*, 1909, pp. 79-81.

The strongest argument.—The strongest argument, however, for the capture of private aircraft is that they are utilisable for military purposes. An aircraft of commercial type could be adapted for night bombing work, and non-military aircraft as a whole could be employed on duties ancillary to those of combatant aircraft, such as transportation of military persons and stores. They belong, in fact, to the category of *matériel* which cannot safely be left at an enemy's disposal, and their inclusion in that category is recognised already in existing international legislation.

Sequestration as an alternative to confiscation.—Article 53 of the Land Warfare Rules adopted at The Hague in 1907 allows an army of occupation to seize "all appliances adapted for the transmission of news or for the transport of persons or goods, whether on land, at sea, or *in the air*, depots of arms, and, in general, all kinds of war material," subject to restoration and to the payment of indemnities at the conclusion of peace. Aircraft would come within the scope of this provision, which, it will be seen, while legalising seizure, secures for the owners of the property referred to a right which will vary in utility with the nature of the property and the length of the war. So far as aircraft are concerned, the right would be one of very doubtful benefit to the owner. His machine will be lost to him for the time; it will be liable to deterioration in store if unused; if used, it may suffer heavier depreciation still; the eventual compensation will be swallowed up in the general war indemnity. From his point of view, it is probably preferable that the machine should be confiscated outright. In that event he knows at all events exactly where it stands; he is fairly certain to have covered his loss by insurance, and will be able to obtain payment for it without waiting (as he would have to do in the other case) until the conclusion of peace. As between confiscation and sequestration, the advantages from the owner's point of view appear to be on the side of the former alternative; and, naturally, the belligerent would also view that alternative with the greater favour.

To differentiate between land types of aircraft, on the one hand, and seaplanes and flying-boats, on the other, or between aircraft (of any type) encountered on land and aircraft (of any type) encountered at sea, and to apply the land war rule to the one category and the maritime rule to the other, would lead to utterly illogical situations and endless complications. All aircraft, wherever encountered, should be treated

alike, and the simplest, and, on the whole, the most practically unobjectionable, course, is to follow the maritime practice.

The rule of confiscation not mandatory.—If confiscation of private enemy shipping is allowed, it is not enjoined by international law, and a belligerent is fully at liberty to waive confiscation if he so desires. Italy and Austria mutually agreed to grant immunity to one another's shipping in the war of 1866.¹ There is no reason why a similar concession should not be made in regard to private aircraft; it would be a matter of special arrangement between the belligerents concerned.

Treatment of enemy private aircraft on the outbreak of hostilities.—If private aircraft are treated like merchant vessels, the question arises whether the same concession which is granted to enemy shipping upon the opening of hostilities should not be extended to enemy aircraft. The concession in question is granted under the Hague Convention of 1907, relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities. By that Convention the contracting Powers have agreed that it is desirable that a belligerent's merchant-ships in an enemy port at the commencement of hostilities should be allowed to depart freely; and if detained, such ships are definitely exempted from confiscation and must be restored at the end of the war, without indemnity, or may be requisitioned, subject to payment of indemnity. The same rule applies to ships which left their last port before the commencement of the war and are encountered at sea in ignorance of its outbreak. The concession does not apply to merchant-ships "whose construction indicates that they are intended to be converted into ships of war."²

There is little to be gained from the application of the principle of the Convention to aircraft. As applied to ships it is definitely obligatory only in regard to their immunity from confiscation; a belligerent is free to detain and requisition the ships if he so desires. For the reasons already stated it is probably, on the whole, to the advantage of aircraft-owners that their property should be subject to confiscation rather than sequestration or requisition with an ultimate liability for indemnity. It is possible, too, that in any extension

¹ Latifi, *Effects of War on Property*, 1909, p. 121.

² For the treatment of enemy merchant vessels in the various belligerents' ports at the outbreak of war in 1914, see Garner, *Int. Law in the Great War*, i. 154-6. See also A. Pearce Higgins, "Enemy Ships in Port at the Outbreak of War," in *British Year Book of International Law*, 1922-23, pp. 55-78.

of the concession to aircraft it would be necessary to except machines which were readily convertible into military aircraft, and such an exception would probably go far to making the concession a dead letter. As regards craft encountered in ignorance of the outbreak of hostilities, the briefer journeys of aircraft (which would normally be fitted with radio apparatus when operating on international routes), as compared with those of merchant vessels, would practically eliminate the kind of case which the existing Convention was intended to meet.

The Air Warfare Rules.—The Rules for air warfare drawn up at The Hague in 1923 are in conformity with the principles set forth in the preceding parts of this chapter. They assimilate aircraft to ships for the purpose of capture and condemnation. Those applicable to enemy aircraft are as follows (some others, which apply also to neutral aircraft, are given in the next chapter¹):—

Art. 32.—Enemy public aircraft, other than those treated on the same footing as private aircraft, shall be subject to confiscation without prize proceedings.²

Art. 52.—Enemy private aircraft are liable to capture in all circumstances.

With these rules should be read Articles 49, 55, and 56, given in the next chapter.

Firing upon non-military aircraft.—The next question which arises is that relating to the conditions under which a non-military aircraft in flight may be fired upon or otherwise endangered by warlike action. Seacraft and aircraft are alike in this respect, that they operate in an element in which the disabling or destruction of the vehicle may involve the loss of life of its occupants. The danger to the individual occupants is more serious when an aircraft is destroyed or disabled, but if the measure of the humanitarian objection to the act of violence be the number of souls affected, it must be admitted to be stronger where merchant vessels (especially passenger vessels) are concerned. On the other hand, the military necessity for warlike action that may involve loss of innocent life is greater in the former case, for the speed of an aircraft, its

¹ See pp. 383, 387, 405.

² As will be seen from Art. 56, given in the next chapter, prize courts are to apply to captured aircraft and their cargoes the same rules as those applicable to merchant vessels and their cargoes; and hence, if the latter are condemned and confiscated, *quid* enemy property, by a prize court, so too will the former be condemned and confiscated.

ability to elude seizure, and its capacity for damaging action (either by bomb-dropping or by observing important movements), render it a more dangerous potential enemy than a sea vessel; and there is always the possibility that an apparently non-military aircraft may be a combatant one disguised.

The maritime rules.—While taking account of these differences, one may make one's starting-point, in approaching the question of the liability of non-military aircraft to be fired upon, the existing international law applicable to the corresponding liability of merchant vessels. Such vessels are subject in two cases to belligerent attack even if it imperils the lives of the crews and passengers. The first is where the merchant vessel itself initiates the attack, and by so doing deliberately surrenders any claim which it may have to immunity from warlike violence. The second is where it disregards a signal or warning from a belligerent warship, whether to stop (for visit or search or some other purpose) or to proceed to a denoted place. It is impossible to deny to belligerents the right to attack a manned non-military aircraft under similar circumstances. A private aircraft, even a passenger-carrying one, would unquestionably be shot down if it initiated attack upon the enemy's air or other combatant forces, and it is fairly certain that, in the practice of war, it will be subject to a similar risk if it disregards an order or signal to alight or to proceed as directed.

The omission of the "semonce."—In the cases mentioned in the last paragraph a special or *ad hoc* warning or signal is contemplated. Circumstances are conceivable in which immediate action would be imperatively necessary, and no warning could be given. Suppose, for instance, that a (*prima facie*) enemy private aircraft is seen approaching suddenly and at high speed an important overseas base or a warship of the other belligerent.¹ (One need not perhaps consider the case of approach to the naval dockyards, military stations, aerodromes, etc., in the belligerent's home territory, but if such a case did arise the same principle would apply to it.) It is

¹ An attack very like that here imagined is stated to have been made upon a British warship at Dunkirk in the late war. An aircraft which bore the British (Service) marks and was, therefore, not suspected, suddenly swooped down and bombed the ship (a naval writer states), killing several of the crew and damaging the ship's machinery. The aircraft was a captured British one manned by two German airmen; it was shot down immediately after by a (real) British machine ("Dug-Out" (Lieut.-Commander S. W. Coxon), *Dover during the Dark Days*, 1919, p. 160).

fairly certain that the commanding officer of the base or of the warship will shell the aircraft without waiting to give any warning signal; yet the aircraft may be a genuinely non-military one which has lost its way. Innocent lives may be lost, but clear military necessity can be pleaded in justification of the action which has led to their loss. It is submitted that the right to fire upon a private aircraft in such circumstances must be admitted, provided the belligerent whose action is in question has issued a general warning or prohibition of approach to his bases, lines of communication, or the limited zone in which his land or naval forces are actually operating or military activity prevails. After such a warning or prohibition private aircraft will approach at their peril, and cannot expect an additional special warning or signal before they are fired upon.

Prohibited areas in the home territory.—The danger area in which private aircraft are liable to be fired upon without an *ad hoc* preliminary warning must, however, be one in which real grounds of military necessity can be pleaded for the omission of such warning. In a belligerent's own territory it would be justifiable to close to air traffic the vicinity of all military and naval stations, aerodromes, magazines, and important munition factories. Even in peace the right to establish "prohibited areas" to which aircraft are denied entry is recognised by international agreement.¹ In Great Britain, if an aircraft flies above a "prohibited area," it may be fired upon if it does not at once comply with a signal to change its course.² In war, military necessity would justify the omission of the warning signal if the circumstances were such as to render delay dangerous. The justification would be still stronger for firing upon a private aircraft approaching the advanced bases or lines of communications of an army operating in the field.

The closure of areas over the high seas.—It is in regard to areas over the high seas that the question of a belligerent's right to fire upon private aircraft entering a zone of operations presents practical difficulties. In naval operations a belligerent has no power to declare a maritime "war zone," and to subject all ships entering it to the liability to be shelled or torpedoed at sight. Germany's assertion of such a right and the rejection of her claim by the maritime nations in the late war have

¹ Art. 3, Air Navigation Convention, 1919.

² Schedule VII., para. 6, of the Air Navigation (Consolidation) Order, 1923.

established its inadmissibility.¹ Yet in another way it is possible to effect the same purpose, and that other way is at once equally or even more full of the menace of disaster to innocent lives, and is nevertheless not forbidden by international law.

The maritime precedents.—It is not contrary to international law to close a maritime zone by laying therein automatic contact mines, and the belligerent who lays them is under no absolute obligation to give *prior* notice to the world at large; he is bound merely to give notice as soon as military exigencies permit.² The object is, of course, to destroy enemy warships, but obviously the effect may be to destroy also other vessels. Given this war right at sea, one need hardly delay to inquire what other rights to prevent merchant vessels from entering a zone of operations a belligerent may possess. Those other rights would undoubtedly include one to warn off all private shipping approaching a limited zone of actual fighting. Such a right is admitted in regard to hospital ships during an engagement,³ and must be admitted *a fortiori* in regard to vessels which have no business in the scene of operations.

The closure of aerial zones over the high seas.—It would be idle to deny that the existing law of maritime warfare could be quoted in support of the contention that at least a restricted, definite zone of the element in which fighting craft operate may be closed to traffic when operations are actually in progress, or military traffic is coming and going. The air cannot be closed by devices similar to the contact mines used to close a sea area, but it can be closed almost as effectually by subjecting all aircraft entering the named zone to the liability to be shot down at sight. The conditions of air warfare could reasonably be held to justify the modification and extension (if it is an extension) of the maritime practice to cover a belligerent right to warn off all aircraft from such a zone by a general prohibition of entry and then to fire upon any aircraft disregarding the prohibition. But any such right must be based on real military

¹ See Garner, *International Law and the World War*, i. 355-83; Oppenheim, *International Law*, ii. § 194a. It is a different matter to close an area under pain of capture of any vessel entering it; Great Britain prohibited navigation in certain sea zones round her coasts in the late war in this way and, if the closure is based on actual military necessity, it can be justified in international law (see J. A. Hall, *Law of Naval Warfare*, 1921, pp. 246-7).

² Convention relating to the Laying of Automatic Contact Submarine Mines, The Hague, 1907. See Garner, *op. cit.*, i. 343; Oppenheim, *op. cit.*, ii. § 182a.

³ Convention for the Adaptation of the Principles of the Geneva Convention to Maritime War, The Hague, 1907, Art. 4.

necessity. The belligerent exercising it must be in a position to point (not necessarily beforehand ¹) to some concrete grounds for his action, e.g. to operations actually in progress on the spot, or important concentrations therein for pending operations, to the constant patrolling of the zone by his aircraft in the search for enemy submarines, to the regular passing of transports over a line of communications, or to some other form of military activity which differentiates the area in question from the ordinary high sea. Due allowance should also be made for the continuance of neutral traffic by allowing freedom of transit, at any rate between two neutral countries, along alternative routes where the normal route lies over a zone thus temporarily closed. Subject to these limitations, the right of a belligerent to issue such a general prohibition as is referred to and to enforce it by immediate warlike measures without further warning cannot offend an international conscience which approves, or at any rate does not prohibit, the laying of automatic contact mines at sea.

The Air Warfare Rules on the subject.—The Air Warfare Rules drawn up at The Hague in 1923 prescribe the conditions in which non-military aircraft may be fired upon. Those relating to neutral aircraft are given in the next chapter and include, it will be seen, an article (Art. 30) empowering a belligerent commanding officer to "prohibit the passing of neutral aircraft in the immediate vicinity of his forces" if "he considers the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment." Neutral aircraft disregarding the prohibition are liable to be fired upon. The prohibition and the liability would apply *a fortiori* to enemy military aircraft, and the Article referred to must, therefore, be regarded as supplementing the following Articles which refer expressly to enemy non-military aircraft:—

Art. 33.—Belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own State, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

Art. 34.—Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy; or (2) in the immediate vicinity thereof and outside the jurisdiction of their own State; or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

¹ The general prohibition must, of course, be beforehand, but it need not necessarily state the *reasons* for which it is issued.

Criticism of the Rules.—The provisions of Article 34 are likely to prove difficult to apply in actual practice. Item (1) of the Article contemplates a contingency which is improbable; enemy non-military aircraft are hardly likely to venture into the jaws of the enemy's jurisdiction. The term "operations" in item (3) of the same Article is unduly restricted. If a belligerent warship saw an enemy private aircraft suddenly approaching at high speed, surely it would be entitled to repel the aircraft by gunfire even if no operations were in progress in the locality? The reference to the "immediate vicinity" of a "jurisdiction"—a new test in international law—may lead to difficulties in interpretation; it will not be an easy test for the officers concerned to apply in practice. The framing of both Articles in a positive, instead of the usual prohibitory, sense leads to lack of precision. The quite unchallengeable right of a belligerent to fire upon a non-military aircraft which disobeys his signal or order to stand off or change its course does not seem to be safeguarded, at any rate in the open sea when "operations" are not in progress.¹

Suggested alternative rule.—For the reasons already stated the writer suggests that the practice of war will tend to substitute a much simpler rule for those contained in Articles 30, 33, and 34; that rule may be tentatively formulated as follows:—

"A non-military aircraft may not be fired upon in flight, unless—

- (1) It disobeys a belligerent's signals or orders; or
- (2) It enters an area notified by him as one of military activity in which aircraft circulate at their peril and are liable to be fired upon without warning."

Destruction of enemy aircraft after seizure.—As regards destruction *after* seizure, the Air Warfare Rules contain the following provision:—

Art. 57.—Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been secured.

With this rule should be read the corresponding provisions in regard to destruction of neutral aircraft after seizure, as contained in Articles 58 to 60 of the Air Warfare Rules, and the comments upon those Articles in the following chapter.

¹ Under Art. 50 (see next chapter) the belligerent would be entitled to fire upon an aircraft which disobeyed a signal or order to alight for *visit and search* or to proceed for *examination*; but that is a different matter.

CHAPTER XVIII.

NEUTRAL AIRCRAFT.

Precedents of 1914-18.—The great war is practically devoid of precedents bearing upon the relations of belligerents and neutral aircraft. A few cases did occur in which neutral military aircraft were attacked by belligerent troops or aircraft. Some squadrons of Roumanian aircraft are stated to have been fired upon when, Roumania being then neutral, they were observing a reported concentration of German and Bulgarian troops upon Roumania's frontier early in 1916.¹ In June, 1917, German seaplanes appear to have attacked a Swedish aircraft in the Baltic; the Swedish paper *Aftonbladet* stated in regard to the incident: "The attack on one of our aviators is a serious breach of international law from more than one point of view."² Another case was that referred to later,³ in which two German aeroplanes shot down a Swiss military balloon, well inside the Swiss frontier line, on 7 October, 1918. But of incidents affecting neutral civil aircraft there appear to have been none. Civil aviation was almost non-existent in 1914-18. The belligerent States prohibited all flying other than that carried out by their own or their Allies' military machines, and the neutral States had, as a whole, developed aviation to a much smaller extent than the countries which were parties to the conflict. No such international air traffic as that which is now in existence had made its appearance before the end of the war.

The Air Warfare Rules.—It is consequently necessary in this chapter, as in the chapters immediately preceding and following it, to approach the subject from some starting-point other than usually adopted in the present book, namely, the actual incidents of the great war. Concrete examples being

¹ See *Exchange* telegram from Paris, 17 February, 1916, quoted in the *Daily Mail*, 18 February, 1916.

² Quoted in *The Aeroplane*, 4 July, 1917.

³ See p. 449.

absent, the most convenient text upon which discussion can be based is the tentative legislation contained in the Air Warfare Rules drawn up at The Hague in 1923. These Rules include certain articles defining the right of belligerents to interfere with neutral air traffic and to fire upon neutral aircraft. The pertinent articles are as follows :—

Art. 11.—Outside the jurisdiction of any State, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

Art. 30.—In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of the forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has had notice issued by the belligerent commanding officer, may be fired upon.

Art. 35.—Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

Art. 50.—Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

Art. 51.—Neutral public non-military aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

The Rules for Control of Radio.—Article 30 must be read with reference to Article 7 of the Rules for the Control of Radio in time of war. The latter article provides as follows :—

“ In case a belligerent commanding officer considers that the success of the operation in which he is engaged may be prejudiced by the presence of vessels or aircraft equipped with radio installations in the vicinity of his armed forces or by the use of such installations therein, he may order neutral vessels or neutral aircraft on or over the high seas :

- (1) To alter their course to such an extent as will be necessary to prevent their approaching the armed forces operating under his command ; or
- (2) Not to make use of their radio transmitting apparatus while in the immediate vicinity of such forces.

“ A neutral vessel or neutral aircraft which does not conform to such direction of which it has had notice, exposes itself to the risk of being fired upon. It will also be liable to capture, and may be condemned if the Prize Court considers that the circumstances justify condemnation.”

It will be seen that this provision, which applies only to (vessels or) aircraft on or over the *high seas*, while Article 30 of the Air Rules is not thus restricted, subjects a neutral aircraft to the same risk of being fired upon and captured as it runs under Articles 30 and 53 (b) of the Air Warfare Regulations. It also authorises a belligerent commanding officer to issue to neutral vessels or aircraft orders which will have the effect of alleviating possible hardships arising from a mere prohibition of approach : that is to say, he can allow the vessel or aircraft to approach on condition that no use is made of its radio-transmitting apparatus.

The intention of the Air Warfare Rules.—Articles 11, 30, and 35 of the Air Warfare Rules, it will be observed, seek to establish a *régime* of free circulation in war time for neutral subjects, subject to the minimum interference necessitated by the exigencies of war. The first two articles have reference to aerial circulation over the high seas, but the second of them (Art. 30) would apply also to other areas in which belligerent forces were operating, presumably, however, outside their own territory, for any State, belligerent or neutral, has the right to control air traffic within its own jurisdiction in virtue of its territorial sovereignty. Article 35 relates to belligerent action against neutral aircraft flying in enemy jurisdiction ; its intention is to secure that the atmosphere within such jurisdiction shall be cleared of neutral aircraft whenever the other belligerent's aircraft enter it. The article does not specify by whom the "warning" is to be given, nor whether it is to be actual or constructive warning. The point is not unimportant. If the warning need not be one given by the approaching belligerent aircraft, the provision amounts to authorising such aircraft to fire at sight upon neutral aircraft flying in enemy jurisdiction. It is doubtful whether this could be justified by any real necessity of war.

The war risks of neutral aircraft.—Unquestionably some measure of belligerent interference with neutral traffic must be recognised as inevitable and legitimate. Military necessity must take precedence of the right of neutral States and individuals to continue to carry on their air traffic in the theatre of war. Generally, apart from liability to capture, neutral aircraft will be subject to the same war risks as belligerent private aircraft, but, because they are neutral, will be entitled to expect from belligerents the maximum assuagement of the rigours of war compatible with military necessities. Those

necessities can be pleaded by belligerents as the justification for interference even with neutral *public* aircraft, but the States to which such aircraft belong will naturally demand that belligerents shall exercise their war rights with due regard to the official character of the aircraft upon which military necessities make it necessary to impose some measure of restraint. Any interference with them is a graver matter than it would be where neutral private aircraft are concerned, and requires a more urgent military necessity to justify it.

Belligerents and neutral military aircraft.—It is doubtful if even the most compelling military necessity could excuse warlike action against a neutral military aircraft. To fire upon such aircraft would probably be to create an international incident the result of which might well be to add another State to the number of those actively engaged in hostilities. Under Article 51 of the Air Warfare Rules, neutral public non-military aircraft are liable to visit only, not to search, and military aircraft are, by implication, exempt even from visit. It is, indeed, conceivable that this exemption may prompt belligerent aircraft to assume the marks of neutral military aircraft; and if there is reasonable suspicion that such an illegitimate ruse has been practised, a belligerent may find it necessary to visit the aircraft suspected. If his suspicions prove to be unfounded, only an immediate and ample apology will avail, presumably, to save a situation of the gravest kind.

Belligerents and neutral civil aircraft.—Still more doubtful, for a different reason, is the assimilation of neutral non-military aircraft, other than those employed on police and customs duties, to private aircraft for the purposes of visit and search, and, in virtue of Article 53 (see later), of capture. The weight to be given to the obvious objection to the seizure and condemnation of an aircraft engaged upon Government service and manned by Government employees can only be ascertained by the practical experience of the working of the rule. Belligerent action of this nature would not have the same justification of military necessity as that which could be pleaded for firing upon neutral public aircraft in circumstances readily conceivable. Omitting military aircraft from consideration, one may perhaps say that the degree of military necessity which would justify a belligerent in firing upon neutral machines would vary in increasing ratio with the variation of their character from ordinary private aircraft, through public aircraft engaged in some semi-commercial service, up to public aircraft

employed on customs and police duties. Stronger military reasons would have to be adduced for firing upon the third than upon the second, and for firing upon the second than upon the first, of the three classes of aircraft referred to. Subject to this qualification, the rule suggested in the last chapter that non-military aircraft are liable to be fired upon if they disobey a belligerent's orders or signals, or if they enter a proclaimed zone of military activity, would apply also to neutral aircraft. Such a rule is more likely to prove a workable one in practice than those embodied in Articles 30, 35, and 50 of the Air Warfare Rules.

Seizure and confiscation of neutral aircraft.—The provisions in the Air Warfare Rules in regard to the seizure, capture, and condemnation of neutral aircraft are contained in Articles 31, 49, 53, 54, 55, and 56. As regards Article 49, it should be pointed out, first, that public non-military aircraft, other than those employed on police and customs duties, are also liable to visit and search and capture, in virtue of their assimilation to private aircraft (see Art. 5 of the Rules); secondly, that while the general liability to capture is affirmed in Article 49, the sole cases in which neutral aircraft are so liable are those defined in Article 53, with which Article 49 must be read.

The Air Warfare Rules.—

Art. 31.—In accordance with the principles of Article 53 of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.¹

Art. 49.—Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

Art. 53.—A neutral private aircraft is liable to capture if it—

- (a) resists the legitimate exercise of belligerent rights;
- (b) violates a prohibition of which it has had notice issued by a belligerent commanding officer under Article 30;
- (c) is engaged in unneutral service;
- (d) is armed in time of war when outside the jurisdiction of its own country;
- (e) has no external marks or uses false marks;
- (f) has no papers or insufficient or irregular papers;
- (g) is manifestly out of the line between the point of departure and the point of destination indicated in its papers and after such enquiries as the belligerent may deem necessary, no

¹ For Art. 53 of the Land Warfare Rules, 1907, see p. 463, *infra*, where this matter is further discussed.

good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries ;

- (h) carries, or itself constitutes, contraband of war ;
- (i) is engaged in breach of a blockade duly established and effectively maintained ;
- (k) has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case, except (k), the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i.e. since it left its point of departure and before it reached its point of destination.

Art. 54.—The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationality of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

Art. 55.—Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

Art. 56.—A private aircraft captured upon the ground that it has no external marks or is using false external marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under Article 30, is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

Classification of the conditions justifying capture.—The conditions under which a neutral private aircraft is liable to capture, as set forth in Article 53, fall naturally into three main categories. The first category comprises all the cases in which an aircraft is captured because of some contravention of the Air Warfare Rules or some violation of a belligerent's rights under the Rules. Resistance to the legitimate exercise of belligerent rights, disregard for a belligerent commanding officer's prohibition of approach to his forces, the use of false marks or absence of marks, participation in hostilities, and non-compliance with the rule forbidding a private aircraft to be

armed in time of war, that is, items (a), (b), so much of (c) as relates to hostile action, (d), and (e) of Article 53 are included in this category. The second category differs from the first in relating to acts which are not forbidden by the Rules nor contraventions of a belligerent's rights under the Rules, which are, in fact, perfectly lawful acts, but which, nevertheless, a belligerent is entitled to penalise, *in terrorem*, because they are detrimental to his interests. The acts referred to are those included in the broad term "unneutral service," with its analogous heads of carriage of contraband¹ and breach of blockade; that is, the acts referred to in items (c), except in so far as it relates to hostile acts, (h) and (i) of Article 53. In the third or last category of acts justifying capture, seizure is in the nature of arrest on suspicion. The cases coming under this category, namely, those referred to in items (f), (g), and (k), are those in which the *bona fides* of the neutral nationality of the aircraft or of its ostensible reason for its presence in the place where it is encountered, is in doubt.

Resistance to belligerent rights.—Of the cases coming under the first of the three categories referred to, only one calls for detailed consideration here. The others have been dealt with sufficiently in the parts of this book referring to the Rules themselves, the contravention of which entails the penalty of capture upon neutral aircraft.² The one case referred to is that of resistance to the exercise of belligerent rights. The maritime rule is that "a mere attempt on the part of a neutral merchantman to escape visitation does not in itself constitute resistance. But she may be chased and compelled by force to bring to, and she cannot complain if, in the endeavour forcibly to compel her to bring to, she is damaged or accidentally sunk. If, however, after the vessel has been compelled to bring to, visit and search show her to be innocent, she must be allowed to proceed upon her course."³

"Forcible resistance, as distinct from flight, on the part of a neutral merchant ship is universally admitted as a just

¹ "Unneutral service" is sometimes called carriage of "analogues of contraband" (see W. E. Hall, *Int. Law*, 1917, §§ 248-53; or "contrebande par analogie" see Fauchille-Bonfils, *Droit Int.*, ii. § 1588 (15)).

² See, as regards prohibition of approach to a belligerent force, pp. 376-81; as regards use of false marks or absence of marks, pp. 68-71 and 95; as regards participation in hostilities, pp. 87-92 and 95; as regards the arming of private aircraft in time of war, p. 95.

³ Oppenheim, *Int. Law*, ii. § 423. See A. Pearce Higgins, *The Hague Peace Conferences*, p. 608.

ground for the condemnation of the ship, for a neutral is under duty to submit to belligerent visit."¹ What exactly "forcible resistance" connotes is not, however, defined, and it is doubtful whether a refusal by the master to show the ship's papers or to open locked boxes would come under the term. It is clear, however, that attempted escape would not be "forcible resistance"; would it be "resistance" under the terms of the provision applying to aircraft? In the Report of the Commission of Jurists who framed the provision, it is stated that the original form of the article added "*or flees*" after "resists," and that these words were omitted deliberately. It appears, therefore, that a neutral aircraft would not be liable to capture merely because it tried to escape, and that some kind of forcible resistance is contemplated in the rule. It is not clear, however, exactly what form such resistance could take, since under Article 16 of the Rules a private aircraft may not be armed outside its own jurisdiction, and a neutral aircraft could not be visited inside its own jurisdiction.² No reference is made to the question of navigation under convoy. Sailing under convoy, if it were practicable in the air, would probably be held to amount to "resistance."

Unneutral service.—The second category of cases in which neutral private aircraft may be captured comprises those acts or services which, though not a violation of any provision of the code, are reprehensible in a belligerent's eyes, as being damaging to his interests, and are therefore undertaken by neutrals with the knowledge that they are risky or adventurous acts or services, the consequences of which may be the loss of their aircraft and cargoes. The first sub-division of this category is that dealing with "unneutral service."

"Unneutral service" is a term of maritime law, and as there used would cover not only the unneutral service of aircraft described below, but also participation in actual hostilities, that is, it would take in not only the first sub-division of the first of the three main categories above referred to, but

¹ A. Pearce Higgins, *Armed Merchant Ships*, in *American Journal of Int. Law*, vol. viii., p. 705, quoted in Garner, *Int. Law and the World War*, i. 404. See also Garner, *op. cit.*, i. 413. Enemy merchant-men need not submit to visit; they may refuse and defend themselves, differing in this from neutral merchant-men, which may not resist; Oppenheim, *Int. Law*, ii. §§ 181, 422; Fauchille-Bonfils, *Droit Int.*, ii. § 1313; J. A. Hall, *Law of Naval Warfare*, pp. 53, 276.

² Fauchille-Bonfils, *Droit Int.*, ii. § 1440 (17), would give private aircraft the same right to defend themselves as merchant vessels, but obviously no such right could be allowed if they are forbidden to be armed.

also a part of the first. It is preferable, however, to treat the participation of aircraft in hostilities (including the transmission in flight of military information in a belligerent's interests) as being distinct from unneutral service in the narrower sense, and, at the same time, to link the latter with carriage of contraband and breach of blockade, which at sea are separate chapters of the law of war and neutrality. Subject to this modification, the term "unneutral service" may be regarded as having in air warfare the same general significance as it has in maritime war.

Unneutral service at sea is the carriage by neutral vessels of certain persons and dispatches for the enemy. Rules in regard to it were laid down in the (unratified) Declaration of London, and were followed by the Allies for the first two years of the great war. Thereafter, the older customary rules became operative again, but as few (if any) cases of unneutral service came before the prize courts after the Declaration had been abandoned, and as the older rules are now largely out of date,¹ it is desirable to treat those laid down in the Declaration as representing (with some slight modifications) the present international law upon the subject.

Three classes of unneutral service.—One may then describe unneutral service as consisting of the following acts or services :—²

- (1) The undertaking of a *special* voyage to carry passengers who are in the enemy's military service, or to transport dispatches ;
- (2) The carriage, on a voyage not specially undertaken for the purpose but carried out in the ordinary course of business, of a military detachment, i.e. not, as in the last case, of individuals, but of a body of military persons ;

¹ Oppenheim, *Int. Law*, ii. § 407.

² The first two cases are dealt with in Art. 45 of the Declaration of London, the third in Art. 46. The former Article, as MM. Fauchille-Bonfils (*Droit Int.*, ii. § 1588 (15)) point out, refers to the *less serious* cases of *assistance hostile*, in which, though a special voyage may be undertaken, the ship is not in the *exclusive* employment of the enemy, as it is in the cases referred to in Art. 46. This difference involves a difference in the sanction ; a ship engaging in the kind of unneutral service referred to in Art. 45 is treated as one *carrying contraband*, whereas if it is employed in the circumstances referred to in Art. 46, it is treated as an *enemy ship*. A third kind of case is dealt with in Art. 47 of the Declaration of London, viz. that in which, without the knowledge of the master, an enemy officer (say an admiral or general) in civilian dress is carried in a neutral ship ; in such a case the officer may be removed by a belligerent warship but the neutral vessel is not penalised (Fauchille-Bonfils, *op. cit.*, ii. § 1588 (16)). See also A. Pearce Higgins, *The Hague Peace Conferences*, pp. 593-7, and J. A. Hall, *Law of Naval Warfare*, pp. 230-47.

- (3) Employment directly under the enemy government, the vessel being either under the orders or control of a government agent placed on board or in the exclusive employment of the government, and therefore in the position of an enemy government vessel (as collier, transport, dispatch-boat, etc.).

Another class of case which is included in the provisions of the Declaration of London in regard to unneutral service is that in which, to the knowledge of the charterer or the master, one or more persons on board directly assist the operations of the enemy in the course of the voyage, e.g. by signalling or by sending wireless messages. The only case of this kind likely to arise in the air is that of transmission during flight of military information for a belligerent's benefit, and as this case is dealt with in connection with the question of participation of unqualified aircraft in hostilities, it need not be considered under unneutral service.

Aircraft and unneutral service.—Of the three sub-divisions of unneutral service set forth in the second last paragraph, the third requires little notice. Whether a neutral private aircraft is or is not in the enemy's direct employment, or at its or its agents' orders or disposal, is a question of fact which it should always be possible to establish by reference to documentary evidence (e.g. in regard to the hiring or chartering of the machine) or to the existence of circumstances (e.g. the fact that a Government agent was in control of the neutral air company's operations) which should leave no doubt that it is actually so employed or controlled. The aircraft is in such a case in the position of an enemy public aircraft; it must be regarded as having lost for the time its neutral character, so far as liability to belligerent seizure is concerned. Before it can be confiscated, however, the belligerent captor must establish his case before a prize court, and to this extent only neutral character may be regarded as being preserved.

The carriage of belligerent persons.—It is more difficult to determine whether a neutral aircraft is liable to confiscation where it has not thus discarded its neutral character and where, if it is hired or utilised for a belligerent's purposes, it is so hired or utilised only as a taxicab or passenger train might be by the casual "fare" or passenger who makes a journey therein. It will sometimes be far from clear in such a case whether there is present that *animus adjuvandi* on the part of the neutral owner or pilot towards the enemy which is the essence of unneutral service. A similar difficulty is encountered in maritime

transport. "The line of demarcation," says Garner,¹ "between the transportation of persons for the aid of a belligerent and their transportation in the ordinary course of commerce is not always easy to draw. . . . No rule can be laid down as to the number of military persons on board which may be necessary to render the vessel liable to confiscation. The transportation of a single general or admiral might under some circumstances be a more noxious act than the conveyance of a large number of ordinary soldiers."

Interpretation of unneutral service of aircraft.—In the absence of "case-law" and of any exact knowledge of the future conditions of commercial aviation, it is impossible to lay down any hard and fast rules on the subject of unneutral service by aircraft. All that one can say is that the question will probably be dealt with by belligerents broadly on the following lines.

They will look to the military importance of the service performed by the neutral aircraft, and will probably be disposed to disregard technical breaches of neutrality of little consequence. The carriage of a single subaltern, for instance, or of a private soldier or two, not engaged on any special mission, but carried by a public air line in the ordinary course of business, will probably be overlooked. But the conveyance of military or official persons of standing, whether on a flight specially undertaken or on a routine journey (e.g. on an ordinary air route such as the present London-Paris or London-Amsterdam route) will probably involve the confiscation of the neutral aircraft concerned, and so will the carriage of political or military dispatches for the other belligerent. Knowledge on the part of the pilot or owner of the status of the passenger or the character of the dispatches will ordinarily be a condition precedent to the fixing of responsibility; but in certain cases constructive knowledge will be assumed, as where the passage or conveyance was arranged through official channels, or where (especially in a flight undertaken *ad hoc* or one to a place which would naturally only be visited in the enemy's interest) the circumstances were such that they should have put the pilot or owner "on inquiry."

Carriage of dispatches.—As regards carriage of dispatches, the rule of maritime law which removes two specific kinds of carriage from the category of unneutral service will no doubt

¹ *Int. Law and the World War*, ii. 372.

be followed also in the air. First, no penalty will attach to the conveyance of dispatches between neutral and enemy Governments, or between the enemy Government and its diplomatic and consular agents abroad. Secondly, the carriage of genuine postal correspondence, official or private, will not entail confiscation of a neutral aircraft. Such correspondence would only be carried in air mails recognised as such by the belligerent State, in whose power it lies to permit or prevent the conveyance, and the case will be well differentiated from the kind of transmission of highly confidential dispatches by courier service or other special arrangements which will alone be regarded as unneutral service.

Contraband of war.—The carriage of contraband is closely akin to that of "noxious persons" and military dispatches, which are indeed sometimes termed "analogues of contraband." "Contraband of war is the designation of such goods as by either belligerent are forbidden to be carried to the enemy on the ground that they enable him to carry on the war with greater vigour."¹ It has been usual to divide contraband articles into two classes: first, those which of their nature are utilisable only for warlike ends; secondly, those which can be utilised for warlike ends but have also a peaceful use. The first class, which is termed "absolute contraband," comprises such articles as arms, ammunition, military, naval, and air force stores. The second, which is termed "conditional contraband," includes such articles as provisions, coal, metals, and money.²

Absolute contraband is always liable to confiscation if consigned to enemy territory or territory occupied by the enemy; conditional contraband only if consigned to the armed forces or to a Government department of the enemy State. Connected with this distinction was another which was usually made before the great war, and which was adopted in the provisions of the (unratified) Declaration of London upon this subject. This was that, while absolute contraband was confiscable if its ultimate destination was hostile, even though the neutral vessel conveying it was bound for a neutral port at the

¹ Oppenheim, *Int. Law*, ii. § 391.

² In the Declaration of London, aircraft were listed as conditional contraband, but were declared absolute contraband by Great Britain in the great war (Garner, *Int. Law and the World War*, ii. 286). As regards the goods which may be declared contraband, see A. Pearce Higgins, *The Hague Peace Conferences*, pp. 583-5; T. J. Lawrence (P. H. Winfield's edn.), *Int. Law*, 1923, pp. 704, 709-20.

time of capture, conditional contraband was liable to capture only when found on a vessel bound for enemy territory or the enemy's armed forces. By a special proviso, however, in the Declaration of London, conditional contraband could exceptionally be confiscated if bound to a neutral port, in cases where the enemy had no seaboard.

The practice in the great war.—The effect of the practice adopted in the great war has been considerably to modify the *de facto* law of contraband. The old distinction between absolute and conditional contraband has largely been destroyed. It was founded in a differentiation between the military and the civilian constituents of a country which national service and the pooling and rationing of all the resources and supplies of a State engaged in a great conflict have proved to be no longer sound. In minor wars, or those of the colonial type (such as the Boer War), the distinction will, however, possibly reappear.

The rule that, except in the case of destination to an enemy country with no sea frontier, conditional contraband was confiscable only when directly consigned to enemy territory or forces, must also be regarded as practically obsolete, in view of the practice of the late war. The Allies, in effect, applied to conditional as well as to absolute contraband the principle of continuous voyage or ultimate destination.¹

Goods exempted from treatment as contraband.—It should be added here that there are two classes of articles which cannot be treated as contraband. These are, first, articles serving exclusively to aid the sick and wounded; secondly, articles intended solely for the use of the vessel, and its crew and passengers, on the voyage. The former kind of articles (medical stores and supplies) may, however, in case of urgent military necessity, be requisitioned if destined to enemy forces or territory, subject to the payment of compensation.²

Air contraband.—The rules applicable to maritime contraband will no doubt be followed in principle by the prize courts which deal with questions of contraband carried by aircraft. The contraband articles themselves are always confiscable; so, too, is the vessel itself in certain circumstances. What these circumstances were varied in the practice of different countries. The rule laid down in the Declaration of London

¹ J. A. Hall, *Law of Naval Warfare*, pp. 197, 218.

² Oppenheim, *Int. Law*, ii. § 396a; A. Pearce Higgins, *The Hague Peace Conferences*, p. 585.

and retained by Great Britain and France even after the Declaration had otherwise been abandoned (in July, 1916), was that the vessel was confiscated if the contraband, reckoned by value, weight, volume or freight, formed more than half the cargo.¹ It is possible that a similar rule may be followed by prize courts in the case of aircraft.

Aircraft as contraband.—In the kind of case just referred to the vessel or aircraft is captured because of the noxious or contraband character of its cargo. But the aircraft itself may be contraband and may be subject to capture as such, independently of any liability which the nature of its contents may reflect upon it. It will be seen later that in certain circumstances a positive obligation rests upon neutral Governments to prevent the export of aircraft from their jurisdiction, and that their failure to observe this obligation is a ground for complaint, as between the damnified belligerent and the neutral Government, of a breach of neutrality.² This obligation arises only where aircraft intended for warlike uses are concerned. Where aircraft not so intended are exported or allowed to depart from neutral territory to a belligerent country, and where, *ex hypothesi*, the other belligerent has declared such aircraft contraband of war, the remedy of the latter belligerent lies not in representations to the neutral Government, but, as in all cases of contraband, in direct repressive action against the noxious traffic itself. That is to say, he can take the law into his own hands and seize and confiscate the contraband aircraft. The neutral aircraft constructor who consigns by air to a belligerent State a machine not intended for use in war does not thereby involve his country in any breach of neutrality; he takes the risk, presumably for sufficient consideration, of losing the aircraft through capture by the other belligerent on its way. This is the kind of case which is referred to in the provision in Article 53 (*h*), that a neutral aircraft is liable to capture if itself constitutes contraband of war. The provision is not a very happy one. A belligerent who has proclaimed all aircraft contraband might claim that the rule justified him in treating any and every aircraft flying to the enemy country as contraband, and, consequently, in capturing such aircraft not only when they were intended to be transferred to the belligerent's use and possession, but also when

¹ J. A. Hall, *Law of Naval Warfare*, pp. 223-5. See also A. Pearce Higgins, *The Hague Peace Conferences*, pp. 590-1.

² See pp. 457-60 and 461-3.

they were genuinely flying on *bona-fide* international air traffic. Such an interpretation of the rule was certainly never intended by its framers. The intention would be clearer if the subparagraph were reworded as follows: "carries contraband of war, or itself constitutes contraband of war as being destined for transfer to belligerent use."

Blockade.—In contraband, the innocence or noxiousness of the service depends upon the character of the goods consigned and the destination or origin of the goods is a secondary consideration. In blockade, on the other hand, the important question is the place to or from which the craft is proceeding, and the nature of the goods is unimportant. Blockade is "the blocking by men-of-war of the approach to the enemy coast, or a part of it, for the purpose of preventing ingress or egress of vessels of all nations."¹ To this definition must now be added, after "vessels," the words "or aircraft." Blockade is a purely maritime institution. It is not found in land warfare, for siege or investment is not governed by the rules which apply to it. Nor can there be, under existing international law, a purely aerial blockade, that is to say, a blockade maintained by aircraft alone. The only change in the older conditions brought about by the development of flight is that aircraft may, on the one hand, be used as an auxiliary of warships in maintaining a blockade established by the latter, and, on the other, that ingress or egress may be denied to aircraft as well as to marine craft when such a blockade is in existence. A blockade's effectiveness would clearly be diminished appreciably if air entry or exit were entirely free.²

Aircraft and Blockade.—The question which concerns us here is the capture of *aircraft* attempting to break blockade inwards or outwards, or escaping after partially succeeding in breaking it outwards. The action of aircraft operating in combination with warships against *marine craft* attempting to break blockade is governed by whatever rule may be adopted in regard to aircraft operations against merchant shipping. If a rule prohibiting attack upon such shipping by aircraft is adopted, the duty of aircraft in a blockade would be confined, in this as in other cases, to warning the warships with which they are acting, of attempts by vessels to break the blockade,

¹ Oppenheim, *Int. Law*, ii. § 368.

² As regards aerial blockade, see Judge Bassett Moore's *International Law and Some Current Illusions and Other Essays*, 1924, pp. 206-7.

that is, it would be a service of observation rather than of actual enforcement of the blockade.

Blockade recognised only if effective.—One of the great charters of maritime international law—the Declaration of Paris of 1856—laid down the rule that a blockade to be binding must be effective. A “paper blockade,” that is, a blockade notified by a belligerent but not established nor maintained by a force sufficient to prevent passage, is not legally a blockade at all, and cannot be recognised as entailing upon vessels (or aircraft) which disregard it the consequences resulting from an effective blockade. But an *effective* blockade does not mean one which makes ingress or egress impossible; it is sufficient if it renders ingress or egress dangerous and exposes vessels engaged in blockade-running to a strong probability of capture. The number of ships maintaining the blockade is immaterial. They may be few or many, the sole question of importance being whether they do in fact effectively prevent, under normal conditions, access to the blockaded port or coast. In one case, that of the blockade of Riga during the Crimean war, the blockade was maintained by a single warship stationed in the Lyser Ort, a three-mile channel forming the only approach to the gulf, and 120 miles from the blockaded port.¹

The effectiveness of a blockade in the air.—If a blockade is to be recognised as extended from the sea to the air above, it must be effective in the air as well as on the sea, but a different degree of effectiveness will probably be demanded in the air, because of the greater difficulty of controlling passage in that element. Take, for instance, the blockade of a short extent of enemy coast surrounded on each side by a neutral coast. Access to such a coast by marine craft can easily be prevented, the line to be watched being, *ex hypothesi*, short; but, for that same reason, access by aircraft would be extremely difficult to prevent, for, instead of attempting direct entry or exit, the blockade-running aircraft could always approach or leave the blockaded area through neutral jurisdiction, into which the belligerent military aircraft acting with the blockading warships could not follow them.² Even where a long line of enemy coast is being blockaded, aircraft would still have an advantage

¹ Oppenheim, *Int. Law*, ii. § 386. See also A. Pearce Higgins, *The Hague Peace Conferences*, pp. 579-81.

² It is assumed that the neutral contiguous States would allow passage through their jurisdiction to the blockade-running aircraft; no rule of neutrality would oblige them to refuse it.

in attempting entry or egress ; they would not be tied to the ports, as marine craft are, but could pass in or out anywhere, provided always that their radius of action was sufficient to enable them to reach a safe landing-ground.

The fact that aircraft could thus find a "way round" would not make the blockade ineffective, within the formula of the Declaration of Paris, nor entitle neutral States to claim that it should not be recognised as a legally existent blockade, the breach of which involved the condemnation of such aircraft as could in fact be captured. The fact that ships can pass (even in fairly considerable numbers, as did the blockade-runners in the American War of Secession) through the blockading cruisers is no ground for holding the blockade to be ineffective, provided that there is on the whole a real danger of capture for any individual vessel making the attempt. This principle will, no doubt, be recognised in a still greater degree in regard to aircraft, and it will be accepted as inevitable that the proportion of captures to successful evasions which would entitle neutrals to challenge the effectiveness of the blockade must be lower in their case than in that of ships.

The innovations of the great war.—If two important innovations which were introduced in the great war in the practice of blockade are maintained in future wars, they will affect aircraft both as auxiliaries of a blockading force and as blockade-running craft. These innovations were: first, the institution of the "long-distance blockade";¹ secondly, the enforcement of it against goods consigned not only to or from Germany, but also to or from neutral countries in proximity to Germany, if the goods were of German destination or origin.² If the further rule then followed that only the contraband goods contained in the vessels stopped by the cruisers maintaining the long-distance blockade were condemned, not non-contraband goods nor the vessels themselves, is followed in future, it will no doubt apply also to aircraft cargoes.³

Exceptions for ignorance of blockade and for distress.—It is probable that the British, American, and Japanese practice of treating a vessel as guilty of blockade-running if she has actual or constructive notice of the existence of the blockade

¹ See Fauchille-Bonfils, *Droit Int.*, ii. § 1656 (21) and (25); J. A. Hall, *Law of Naval Warfare*, pp. 195, 206; Oppenheim, *Int. Law*, ii. § 390a.

² See Garner, *Int. Law and the World War*, ii. 319-49.

³ See Garner, *op. cit.*, ii. 323, 335; Fauchille-Bonfils, *Droit Int.*, ii. § 1656 (21); J. A. Hall, *Law of Naval Warfare*, p. 195.

will be applied to blockade-running aircraft, in preference to the French and Italian practice of warning each individual craft seeking to enter a blockaded port.¹ Actual *ad hoc* notice would clearly be impracticable in the case of aircraft. The comparatively shorter voyages of aircraft will make the presumption of knowledge of the existence of the blockade normally reasonable. Another rule of maritime law which will no doubt be extended to aircraft will be that which absolves from the ordinary consequences of breach of blockade a vessel obliged to enter a blockaded port on account of its unseaworthy condition or of stress of weather or need of supplies.² It would clearly be unjust to condemn an aircraft which is forced to land, even in a blockaded area, by engine failure, lack of fuel, or sudden storm, provided always the alleged reason was in fact the real one.

Consequences of breach of blockade.—The consequences of breach of blockade are the capture and condemnation of the vessel and its cargo. British and American prize courts have usually condemned the cargo only when it was the property of the shipowner, or, if not his property, when it was contraband, or the owner of it was aware of the blockade at the time of shipment. The latter rule was modified in the Declaration of London to one which allowed release of the cargo if its owner neither knew nor could have known of the intention to break blockade. As the Declaration was not ratified, the old rule still, however, stands. As already stated, the practice in the long-distance blockade of 1915-18 was exceptional, only contraband cargo being condemned. Prize courts will no doubt follow the maritime practice in force in the State concerned in dealing with aircraft and aircraft cargoes brought before them for breach of blockade.

Limit of liability of blockade runners.—The time within which a vessel may be captured for breach of blockade is a question of some difficulty. According to British and American practice, it begins when the vessel leaves the port from which she sails on the blockade-running voyage, and ends when she again enters that port. The whole voyage is considered as one, and the vessel may be captured at any time during the outward or return journey. Continental nations, on the other hand, would regard a vessel as attempting to break blockade

¹ Oppenheim, *Int. Law*, ii. § 384; Fauchille-Bonfils, *Droit Int.*, ii. § 1656 (5).

² Oppenheim, *Int. Law*, ii. § 386; A. Pearce Higgins, *The Hague Peace Conferences*, p. 574.

only while she was on the line of blockade, or was being pursued by one of the blockading cruisers.¹ The (unratified) Declaration of London would have treated a vessel as *in delicto* only so long as she was being pursued by a warship of the blockading force, and she might no longer be captured (by a fresh cruiser) if the pursuit was abandoned or if the blockade was raised. What rule will be applied to blockade-breaking aircraft cannot be foretold with certainty, but it appears probable that an aircraft will be liable to capture (and subsequent condemnation) during the whole course of its journey to and from the blockaded area, such journey being regarded as a whole even if broken by intermediate landings to obtain petrol or undergo repairs, or possibly to deposit or take up other goods than those carried to or from the blockaded area. The fact that the journey may be in part through neutral jurisdiction, or may be mainly concerned with business at neutral aerodromes, will probably not affect the liability of the aircraft to capture if it can be shown that its itinerary included a call in the blockaded area, and if the aircraft is actually apprehended in some stage of the "out and home" journey. Whether, furthermore, the doctrine of "continuous voyage" will be applied to air traffic between a neutral port of origin and a neutral State contiguous to a blockaded area, remains to be seen; possibly it will be held that an aircraft which conveys to such a contiguous neutral State goods to be consigned thence (by some other means) to the blockaded area, is to be regarded as breaking the blockade, provided always that the ultimate destination of the goods is clearly established.

Sieges and investments.—Blockade being a maritime measure of war, its rules are not applicable to a siege or investment by land troops only. A neutral aircraft attempting to leave or enter a besieged or invested town would, indeed, be liable to capture and condemnation, but not for breach of blockade; it would come under the provision of Article 53 (b), which relates to the violation of the prohibition of a commanding officer issued under the terms of Article 30.

Arrest on suspicion.—Arrest on suspicion, the principle of the last of the three broad categories of reasons for capture of a neutral private aircraft, is also known to maritime law. A neutral merchant-vessel may always be seized if she carries double or false papers, or if there is reason to believe that she

¹ Oppenheim, *Int. Law*, ii. § 389; Fauchille-Bonfils, *Droit Int.*, § 1656 (11); J. A. Hall, *Law of Naval Warfare*, p. 207.

has destroyed or thrown overboard her papers, defaced them, or concealed them. Condemnation of the ship may follow where other circumstances increase the suspicion aroused by the spoliation, defacement or suspicion, or, if it is a question of false or double papers, where it is clear that the purpose was to deceive the belligerent by whom the capture is made.¹

Aircraft's papers.—The papers which an aircraft is obliged to carry in war-time under Article 54 of the Air Warfare Convention must show certain particulars, all of which are not necessarily contained in those prescribed by Article 19 of the Air Navigation Convention, 1919. The latter Article requires an aircraft to carry :—

- (a) a certificate of registration ;
- (b) a certificate of airworthiness ;
- (c) certificates and licences of the crew ;
- (d) if passengers are carried, a list of their names ;
- (e) if freight is carried, bills of lading and manifest ;
- (f) log-books ;
- (g) if equipped with wireless, a special licence therefor.

These documents must be supplemented or expanded in war-time to show (if they do not already do so) the nationality of the crew and passengers, the points of departure and destination of the flight, and the conditions under which the cargo is transported. The additional information is required in order to establish the liability of the crews and passengers to detention as prisoners of war, and of the aircraft and its cargo to capture on the ground of blockade-running, unneutral service, etc.

Transfer of "flag."—Transfer of merchant-vessels from enemy to neutral ownership during or in view of war is always regarded with suspicion, and the same principle is applied to transfers of aircraft by Article 53 of the Air Warfare Rules. Under French practice no transfer of enemy vessels to neutrals after the outbreak of war is recognised ; British and American practice, however, allow such transfer if it is *bonâ fide*, was not effected in a blockaded port, or while the vessel is *in transitu*, and is not such as to preserve for the vendor any continued interest in the vessel or the right to recover or repurchase it after the war.² In the (unratified) Declaration of London,

¹ Oppenheim, *Int. Law*, ii. § 426. The papers which a ship should carry are (1) a certificate of registry or sea-letter ; (2) the muster roll ; (3) the log-book ; (4) the manifest of cargo ; (5) bills of lading ; (6) if chartered, the charter-party.

² *Ibid.*, ii. § 91.

rules were laid down to govern the validity of transfers from enemy to neutral flag before and after the outbreak of hostilities. Their effect was, broadly, to validate transfer *before* the outbreak of hostilities, unless the captor could prove that it was made in order to avoid capture, and to invalidate transfer *after* the outbreak, unless the owner could prove that it was *not* made in order to avoid capture. In the former case, certain presumptions were to be admitted, according to the length of time before the war at which the transfer was effected, and in the latter the owner was debarred from rebutting the presumption that the transfer was void if it was made in a blockaded port or *in transitu*, or if a right to repurchase or recover was reserved to the vendor, or if the requirements of the municipal law of the purchaser's State were not fulfilled. Prize courts will no doubt deal with transfers of aircraft from enemy to neutral ownership on the same general lines as they deal with the corresponding question of the transfer of merchant-vessels.

Suspicious deviation from course.—The fact that a ship is deliberately out of her course, as indicated in her papers, is usually a ground for suspicion that she is carrying something which she desires to hide, and is consequently a reason for supplementing visit by an exhaustive search for concealed contraband. As regards aircraft, a similar deliberate deviation would probably point rather to the carriage, or the return from the deposit, of either a secret agent or confidential dispatches, that is, to employment in the enemy's intelligence service. The speed of aircraft and their freedom from control render them particularly suitable for employment in unneutral service of this kind. It will often be impossible to determine at once what the true reason for the deviation is, and it is therefore provided that an aircraft which is out of the line between its ostensible points of departure and destination may be detained while the case is being investigated. If the result of the inquiries (which would include possibly application to the capturing belligerent's representatives at the point of departure and in the vicinity of the suspected region of deposit of the agent or dispatches) show that there is no evidence against the aircraft, it would be released; if evidence against it is forthcoming, the aircraft would be brought before a prize court for condemnation.

Liability confined to craft captured "in delicto."—The proviso in the final paragraph of Article 53 is in conformity

with the rule of maritime law that a neutral vessel is liable to be captured for unneutral service, breach of blockade, or carriage of contraband only so long as she is *in delicto*.¹

The exception recognised by British and American practice to the rule that a ship which has deposited her contraband may not be seized upon her return journey, namely, that her liability to capture continues during the return journey, if she had carried contraband on the outward journey under simulated and false papers,² is not provided for in the rule laid down for aircraft. The sole exception to the rule that the act entailing capture must be one carried out in the flight in which the neutral aircraft falls into the belligerent's hands, is the obvious one arising in the case of recent change of nationality. The ground for capture in that case—the transfer of “flag”—clearly cannot have taken place in the course of the flight in which the aircraft is seized.

Aircraft and prize courts.—Article 55 of the Air Warfare Rules provides that captured aircraft and their cargoes shall be brought before a prize court, in order that any neutral claim may be heard and determined. Although it is for the purpose of protecting neutral interests that the reference to the court is made, the rule applies to enemy aircraft, other than military, customs, and police (these being confiscable without prize proceedings), as well as to neutral aircraft, for some neutral interest may possibly be involved even where enemy aircraft are concerned. Prize courts are an institution of maritime war, and particulars of their nature and functions may be found in the standard works on international law.³

Condemnation of neutral aircraft.—Article 56 of the Air Warfare Rules states the grounds upon which aircraft may be condemned by a prize court. These grounds are, with four additions, identical with those upon which merchant vessels may be condemned. The four additional grounds are : (1) The absence of external marks ; (2) the use of false marks ; (3) the carriage of arms outside the aircraft's own jurisdiction ; (4) the failure to comply with a belligerent commander's prohibition under Article 30. A merchant vessel would not be liable to condemnation on these grounds, and hence they are not

¹ See Oppenheim, *Int. Law*, ii. § 411 (as to unneutral service), § 389 (as to breach of blockade), § 404 (as to carriage of contraband).

² *Ibid.*, ii. § 404 ; Fauchille-Bonfils, *Droit Int.*, ii. § 1588 (41) (43) ; J. A. Hall, *Law of Naval Warfare*, p. 223.

³ See, e.g., Oppenheim, *Int. Law*, ii. § 192 ; J. A. Hall, *Law of Naval Warfare*, pp. 19-20, 299-330.

covered by the provision in the article that the naval rules are to be applied and require to be expressed as an addition to the normal grounds for condemnation. It is only, of course, in regard to neutral aircraft or property that special grounds for condemnation have to be established; enemy aircraft, as such, are liable in all cases to condemnation. As regards enemy goods carried in an aircraft, release or condemnation will depend, as in maritime cases, upon the circumstances of capture (i.e. whether it is capture for blockade-breaking, for carriage of contraband, or as the case may be), and upon the facts of the case. No general rule upon the subject can be laid down.

The incorporation in the law affecting aircraft of the naval prize practice has the effect, it will be seen, of entailing condemnation upon a neutral aircraft captured in the circumstances referred to in items (a), (c), (f), (g), (h), (i), and (k) of Article 53; and, as stated above, items (b), (d), and (e) of that article are covered by specific authority for condemnation in Article 56. It remains to be seen how far prize courts, while acting in general conformity with Article 56, will modify the maritime rules in applying them to air prizes. It is fairly certain that in course of time some divergence from the maritime rules will make itself apparent. The conditions of air traffic will probably differ in various respects from those of sea-borne commerce, and the principles governing the decisions of prize courts in naval cases may be found to be inapplicable without considerable modifications to aircraft and their cargoes.

Postal correspondence in aircraft.—Postal correspondence on board an aircraft is specially mentioned in Article 56, in order to make it clear that the maritime rule exempting such correspondence from confiscation applies also in the air. Under The Hague Convention relative to certain Restrictions on the Exercise of Right of Capture in Maritime War, postal correspondence, neutral or belligerent, official or private, found on board a neutral or enemy ship at sea, is inviolable,¹ and, if

¹ The postal correspondence which is inviolable at sea under the terms of The Hague Convention of 1907 relating to this matter does not include postal parcels or packets (*colis postaux*) and such parcels may be seized and detained if they contain contraband goods for the enemy's use. This was definitely agreed at the discussion at The Hague in 1907 and was admitted by the American Government in 1916 in a memorandum addressed to the British Foreign Office. (See J. A. Hall, *Law of Naval Warfare*, p. 90.) The American Government also inclined to the opinion that the British practice of seizing stocks, bonds, coupons, and similar securities, and money orders, cheques, drafts, notes, and other negotiable instruments, was not an infraction of the Convention of 1907 (Garner, *Int. Law and the World War*, ii. 354-7).

the ship is detained, must be forwarded by the captor with the least possible delay. The concession is not, however, applicable to correspondence seized in connection with a breach of blockade. The Convention does not exempt mail-ships from visit and search, but provides that they shall be searched only when absolutely necessary, and with as much consideration and dispatch as possible.

Destruction of aircraft and their cargoes after capture.—

Articles 57 to 60 of the Air Warfare Rules legalise the destruction of private (enemy or neutral) aircraft *after* visit and search subject to certain conditions there specified. The Articles are as follows :—

Art. 57.—Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

Art. 58.—Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

Art. 59.—Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who has destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

Art. 60.—Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Article 59 will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

The maritime rules as to destruction of prizes.—The rules laid down in Articles 57, 58, and 59 in regard to the destruction in certain circumstances of enemy and neutral private aircraft which have been captured, follow those applicable to the destruction of enemy and neutral merchant-vessels, with some minor modifications. The maritime rules varied in the practice of the various Powers. Great Britain, for instance, held that the destruction of neutral merchant-vessels was in no case legitimate, whereas other Powers regarded destruction as permissible in exceptional circumstances. An attempt was made in the (unratified) Declaration of London to define such exceptional circumstances.¹ Article 49 of the Declaration permitted the destruction of a neutral prize if it would have been liable to condemnation, and if the taking of the vessel into port would have involved danger to the safety of the capturing cruiser or to the success of the operations in which she was for the time engaged. The rule that only neutral prizes which would have been liable to condemnation might be destroyed had the effect of limiting permissible destruction to three cases, viz.: (1) where the vessel was carrying contraband of a value amounting to more than half the value of the cargo; (2) where she was engaged in unneutral service; (3) where she was captured for breach of blockade.²

The destruction of neutral aircraft.—It will be observed that the cases in which a neutral private aircraft may be destroyed under the terms of Article 58 of the Air Warfare Rules are not identical with those in which a neutral vessel might have been destroyed under the terms of the Declaration of London.

Apart from minor differences, there is the important divergence that, under the final sentence of Article 58, grave military emergency is a justification for the destruction of neutral aircraft in cases other than the three specified in the first sentence of that article, and as the nature of such an emergency is not, and could not well be, defined, it appears that the circumstances under which a neutral aircraft may be destroyed

¹ See A. Pearce Higgins, *The Hague Peace Conferences*, p. 598.

² Oppenheim, *Int. Law*, ii. § 431. See also Garner, *Int. Law and the World War*, ii. 256-68. As regards the destruction of neutral vessels by German submarines in 1914-18, see Garner, ii. 269-84.

after capture are wider than those under which a prize (at any rate, according to the British view) can be destroyed at sea.

Destruction improbable in practice.—It is doubtful, however, whether in practice it will often be found necessary by belligerents to make use of their powers under Articles 57 and 58. Cases in which an enemy or neutral aircraft is destroyed *before* capture, as, for instance, where such aircraft attempts to evade seizure, may unfortunately arise, but deliberate destruction *after* capture should be rare. Normally, if it is not practicable to send in the aircraft for adjudication, it will also be impracticable to take steps to destroy it after seizure, at any rate where the seizure is effected by a belligerent aircraft, as normally it would be effected in practice. A belligerent military aircraft has the right to order an enemy or neutral aircraft to submit to visit and search, or to proceed to a reasonably accessible locality for that purpose.¹ It is improbable, unless the effective radius of aircraft is very considerably increased, that belligerent military aircraft will be operating at such distances from their bases that the capture ensuing upon visit and search will take place in circumstances in which the aircraft cannot be physically secured after seizure. Only where it takes place either over the high seas or over enemy territory should this be normally impracticable. In the former case, the abandoned aircraft (for the occupants must be removed before destruction) can well be left to the mercy of wind and wave;² in the latter, the risks attending a descent in enemy territory will probably disincline the military aircraft's pilot from venturing upon a task which cannot have any very pronounced military consequence.

The same remarks apply to the provisions of Article 60 in regard to the removal or destruction of contraband carried by a neutral private aircraft. The circumstances which prevented compliance with the normal rule that the aircraft, with its contraband cargo, should be sent in for condemnation, would equally prevent belligerent aircraft (at any rate) from carrying out the removal or destruction of the contraband. A military aircraft, unlike a warship, would hardly be in a position to take on board any such considerable quantity of contraband as would make the operation of transshipment worth while, but no doubt in some exceptional cases a small but militarily valuable

¹ Arts. 48 and 50, Air Warfare Rules.

² This is equally true where the aircraft has been captured by a belligerent warship.

consignment could be so secured. Destruction of the contraband would be an alternative course where the quantity was larger, but here again the difficulties preventing diversion of the aircraft to a place where it could be apprehended would usually prove also to be obstacles to the operation of picking out and destroying the contraband: an operation which would not demand much less time, trouble, and risk than "shepherding" the aircraft to a belligerent base would involve.¹

Destruction of conditional contraband not permissible.—

It will be observed that only absolute contraband can be removed or destroyed under the terms of Article 60 of the Air Warfare Rules. The rules laid down in the Declaration of London (Arts. 44 and 54), and followed by Great Britain and France during the first two years of the great war, allowed all contraband goods, whether absolute or conditional, carried by a neutral merchant vessel, to be removed or destroyed in analogous cases at sea. It is possible that in practice belligerents will claim a right to remove from neutral aircraft, or to destroy, conditional as well as absolute contraband, subject (perhaps) in the former case to payment of the full value of the goods destroyed. How the law in this respect will shape itself will depend on the still undeveloped conditions of commercial air transport and also on the rulings of prize courts.

Destruction to be confirmed by prize proceedings.—Every case of the destruction, after capture, of a neutral aircraft, or of the removal or destruction of contraband carried by a neutral aircraft, is required by Article 59 and Article 60 to be made the subject of prize court proceedings. For this purpose, the captor is required, where he removes or destroys contraband goods, to record the facts in the aircraft's log, and to secure, in original or copy, the papers relevant to the consignment. The rule of maritime law requires all cases of destruction of a neutral prize, or of the removal or destruction of contraband carried by a neutral vessel, to be brought before the prize courts. These courts pronounce upon two questions, namely, upon that of the validity of the capture and upon that of the justification for the destruction (or removal of contraband). It may clearly happen that while the capture was valid, the conditions justifying destruction were not present; and the converse case may also arise, the destruction being—given the

¹ The circumstances in which a warship would be unable to remove, but would be in a position to destroy, contraband goods carried in an aircraft which was not itself destroyed, are not easy to visualise.

conditions that existed—justifiable but the capture being invalid. The captor has first to satisfy the prize court that the destruction was necessary. When this has been proved, the further question is considered whether the vessel was liable to condemnation—a question which depends upon the judgment of the prize court, not (as in the case of the destruction) upon the decision, taken upon the spot, and without the full evidence that may later become available, of the belligerent officer who carried out the destruction. The latter's view that it was a clear case for condemnation may not be upheld by the court.

The maritime rules upon the subject are applied, *mutatis mutandis*, to neutral private aircraft and their cargoes of absolute contraband by Articles 59 and 60 of the Air Warfare Rules. If the prize court holds either the destruction or the initial capture to have been unjustified or invalid, parties interested in the aircraft or the cargo are entitled to compensation. The further maritime rule that owners of neutral goods, not liable to condemnation, destroyed with the vessel, are entitled to damages, is not reproduced in the air code, but is no doubt to be understood as applying.

CHAPTER XIX.

CREWS AND PASSENGERS OF ENEMY AND NEUTRAL AIRCRAFT.

The Air Warfare Rules.—The Rules drawn up by the Commission of Jurists who met at The Hague in 1922-23 contain the following provisions in regard to the treatment of the crews and passengers of enemy and neutral aircraft.

They provide, it will be seen, in some detail for the release or detention of the various categories of persons affected in the circumstances described. Possibly in so doing they are seeking to legislate for conditions which are, as yet, not very clearly defined; but in such a matter it is advantageous to anticipate the emergencies which are likely to arise and so far as possible to provide beforehand for their settlement.

Art. 36.—When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerents so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertaking.

Art. 37.—Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerents so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

Art. 38.—Where under the provisions of Articles 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favourable than that accorded to prisoners of war.

The principles of the Rules.—The provisions of Articles 36 and 37 of the Air Warfare Regulations will be clearer if the principles which appear to underlie them are first stated. They are as follows:—

First, the pilot, navigator, engineer, or even mechanic of an aircraft is too valuable a man in war-time to be left available for the enemy's service if he can be detained. Hence an *enemy national* who is serving in the *crew of any aircraft* (enemy or neutral)¹ may be made a prisoner of war, and so may a *neutral national* who is a member of the *crew of an enemy aircraft*, subject, however, in this latter case, to the concession in regard to release on parole explained below.

Secondly, aircraft are particularly suitable for conveying abroad agents in the enemy's employment, dispatched upon

¹ See, however, the remarks in a subsequent part of this chapter in regard to the possible waiver by belligerents of their strict right to capture the crews of neutral public aircraft.

special missions, and not necessarily either enemy subjects or members of the enemy's armed forces. A belligerent cannot be denied the right to intercept persons engaged in work so damaging to his interests, and hence it is provided that any member of the crew or any passenger in an enemy or neutral aircraft may be captured if he is *in the enemy's service*, whether he be a national of the enemy or of a neutral State.

Thirdly, a belligerent cannot be expected to allow the transport of enemy subjects who, if permitted to pass, would in all probability take their place in the enemy's ranks in the field,¹ and it is therefore provided that enemy subjects fit for military service, i.e. *potential enemy soldiers*, may be made prisoners of war, whether travelling in enemy or neutral aircraft.

The capture of neutral members of enemy aircraft crews.—

As regards the first of the three grounds for capture above referred to, the treatment of a *neutral* member of the crew of an enemy private aircraft as a prisoner of war may be challenged, but it can be justified on the ground that, by taking service in an enemy aircraft, the neutral subject in question may set free some other skilled (enemy) airman for service in a combatant enemy aircraft. If, however, the capturing belligerent can be assured that the man will not continue indirectly to assist the enemy in this way, he has no interest in detaining him. It is therefore provided that a neutral member of the crew of an enemy aircraft, if he is not in the enemy's service, shall be released upon giving a written undertaking not to serve in an enemy aircraft while hostilities last. The parole so required is analogous to that laid down for officers of the enemy's mercantile marine in the Convention of The Hague on certain Restrictions on the Exercise of the Right of Capture in Maritime War. The subordinate members of the crew of an enemy merchant ship are not required to give their parole, but they are less highly trained specialists than the operating crew of an aircraft, and for this reason the giving of the parole is made a condition of release of all the (neutral) members of the crew of an enemy aircraft. The concession is not made, it will be seen, to *enemy* nationals. When the number of persons with a skilled knowledge of airmanship and technical aircraft work approaches that of the mercantile marine it will be time to allow to captured aircraft crews generally the privileges

¹ Or in the enemy's fleet or his air force.

which were not granted to merchant seamen until the year 1907.

The capture of neutrals in the enemy's service.—The second ground for capture is one justified by the experience of the great war. One of the most delicate and difficult tasks which the British examination service had to perform was the detection and intercepting of the secret service agents sent out by Germany on missions of many kinds in all parts of the world. Early in the war Great Britain claimed and exercised the right to remove from American steamships enemy subjects suspected of participation in a plot to organise a revolt in India. Sir Edward Grey affirmed a belligerent's right to intercept agents sent by the enemy to injure his opponents abroad, even if such agents were not mobilised members of the enemy's forces.¹ With the increase of air traffic it is probable that future wars will witness the use on a considerable scale of aircraft, especially neutral aircraft, for the transport of the belligerents' secret service agents, and the opposing belligerent cannot reasonably be expected to allow them to pass on the plea that they are not "military persons," or that they are bound for a neutral destination. Their being neutral subjects must also be regarded as immaterial if it is proved that they are in fact employed by the enemy.

The capture of enemy civilians fit for military service.—

In the third and last of the three reasons for capture, we have still another application to air traffic of an innovation which was found to be necessary in 1914-18. The provision that enemy nationals "fit for military service" may be captured, whether carried in neutral or in enemy aircraft, reproduces the practice of the Allies in regard to the removal from neutral merchant vessels of enemy subjects of military age and condition. The old rule of international law was that "military persons" could be removed from such vessels, and Article 47 of the (unratified) Declaration of London recognised this rule by enacting that persons *embodied* in the armed forces of the enemy could be removed and detained. By implication no right was recognised to deal similarly with enemy nationals who, though of military age and fit for service, were not actually embodied or enlisted or otherwise incorporated in the fighting forces. In the great war, Great Britain and France found it necessary to modify the former practice. Their action was

¹ Garner, *Int. Law and the World War*, ii. 366-7. See also J. A. Hall, *Law of Naval Warfare*, 1921, p. 239, and Fauchille-Bonfils, *Droit Int.*, ii. § 1588 (48).

stated to be a measure of reprisals justified by Germany's action in removing able-bodied persons of military age from the occupied parts of France and Belgium, and appears at first to have been limited to the removal of reservists of the enemy forces. Later, persons who were in no sense reservists were retained, all enemy civilians of military age being removed. In all some 3500 subjects of the Central Powers are stated to have been thus removed and detained.¹ The practice of Great Britain and France, although originally adopted as a reprisal, is likely to be followed in future wars, at all events, in those in which compulsory service is in force in the country to which the enemy nationals whose detention is in question belong. It can clearly be justified on the ground that to allow the transportation of such persons would be to augment the enemy's armed forces. The fact that they are not actually embodied in those forces is not a very logical reason for releasing them; their being turned into passable soldiers is only a matter of a few weeks. The older rule was really a relic of the days of the purely professional armies of the past.

Personnel of enemy public civil aircraft.—The position of the crews and passengers of enemy public non-military aircraft in regard to capture should be carefully noted. It will be observed that, with one exception, they are dealt with in the same way as the crews and passengers of enemy *military* aircraft. The single exception is that relating to the passengers (not the crews) of enemy public non-military aircraft devoted exclusively to the transport of passengers. Such passengers are dealt with in the same manner as the passengers carried by enemy *private* aircraft. It is clear, therefore, that, subject to this one exception, the rule laid down in Article 5 of the Air Warfare Regulations, that public non-military aircraft other than customs and police are to be treated on the same footing as private aircraft, does not apply to the treatment of the crews and passengers of enemy non-public aircraft. If that rule did apply, the crews and passengers of all such aircraft, save only those engaged in customs and police duties, would have been treated in the manner in which only the passengers of enemy public passenger-carrying aircraft, and of such aircraft alone, are entitled to be treated under the terms of Article 36.

¹ Oppenheim, *Int. Law*, ii. § 413a. See also Garner, *Int. Law and the World War*, ii. 362-73, and Fauchille-Bonfils, *Droit Int.*, ii. § 1588 (47) and (48).

Personnel of neutral public civil aircraft.—The same observations do not apply to neutral public non-military aircraft. In Article 37 there is nothing to indicate that the rule in Article 5 is in abeyance as regards the treatment of the crews and passengers of such aircraft. It must therefore be inferred that they will be treated in the same way as the crews and passengers of private aircraft, within the limitations laid down in Article 5. It is possible, however, that in practice belligerents will be prepared to modify the application of the provisions of that Article to the extent of waiving their right to capture the crews (being enemy nationals or in enemy service) of neutral public aircraft, other than those in any case exempt from capture, that is, other than the crews of customs and police aircraft. The crews in question will be persons in the direct employment of neutral governments, and international comity, at least, would seem to demand that they should not be made prisoners of war even if they are enemy nationals, and therefore strictly liable to capture under the terms of Article 37, read in conjunction with Article 5.

"Capture" and "detention" of aircraft.—Article 36 prescribes rules for the treatment of the occupants of an enemy aircraft which "falls into the hands of a belligerent"; Article 37 speaks of a neutral aircraft "which has been detained by a belligerent." All enemy aircraft being liable to capture, it follows that the rules in Article 36 are applicable to all cases in which a belligerent's power to apply them can arise at all. In regard to neutral aircraft the position is different, and it is not entirely clear whether the rules in Article 37 refer to cases in which the aircraft is captured (under Art. 53) or requisitioned (under Art. 31), in both of which cases the aircraft is obviously "detained," or also to those in which it is merely stopped or diverted for examination. From the nature of the provisions of the Article, and on the analogy of maritime practice, it would appear that the latter assumption is the correct one; but this statement must be qualified by the proviso that a belligerent would not be justified in removing from a neutral aircraft which is not liable to capture or requisition, and which should therefore be permitted to continue its journey, a member of the crew whose removal would make continuance of the flight impossible or hazardous.

Flying ambulances.—The provision in Article 36 that the crew and the passengers, if any, in an enemy military aircraft may be made prisoners of war, must be regarded as subject to

an exception in favour of the crew and any medical *personnel* who may be passengers in a flying ambulance. Under the terms of the Geneva Convention, 1906, medical *personnel*, including the drivers of field ambulances, are not liable to be made prisoners of war, although they may be retained temporarily by the opposing belligerent if their assistance is indispensable (Art. 12 of the Convention of 1906). Military hospital ships and their *personnel*, and the medical and hospital staff of fighting ships, are similarly exempt from capture (Arts. 1 and 10, Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare, 1907). The same principles must apply to the crews of flying ambulances, in view of the terms of Article 17 of the Air Warfare Rules. The sick and wounded carried by such ambulances are not exempt, however, from the liability to capture. There is no provision of the Geneva Convention, 1906, which would entitle them to such exemption, and Article 12 of the Convention of 1907, above referred to, expressly permits a belligerent warship to demand the surrender of wounded, sick, or shipwrecked men of the enemy's forces who are on board hospital ships of any kind.

Postponement of release.—The provision that "release may be delayed if the military interests of the belligerent so require" is intended to make it clear that a belligerent is not bound immediately to liberate air travellers, normally entitled to release, if at the moment of or after coming into his hands they have been enabled to witness military movements or preparations which cannot safely be allowed to come directly or indirectly to the enemy's knowledge. Only a purely temporary detention is intended to be authorised. The provision is justified solely by the military interests of the captor, and any postponement of release beyond the period actually necessary to safeguard those interests would be a violation of the terms of the article. Although not affirmed in Articles 36 and 37, a belligerent's right to prescribe the route by which the persons concerned shall proceed on release must also be recognised.¹

¹ As to the route by which the aircraft itself proceeds if continuing its journey, the belligerent's interests can be safeguarded by exercise of his powers under Art. 12, if the military preparations, etc., are taking place within his jurisdiction, and under Art. 30, if it is a question of operations, or movements leading up to operations, outside his jurisdiction. It is improbable that the belligerent would order an aircraft to alight in or proceed for visit and search to any place in which observation by the occupants of military preparations, etc., would be possible.

Assistance to the enemy as a ground for capture.—

Articles 36 and 37 alike empower a belligerent to hold as prisoners of war occupants of either enemy or neutral aircraft whose service in the flight in which they come into his hands has been of "special and active assistance to the enemy." So far as neutral aircraft are concerned, the kind of service here referred to is mainly the "unneutral service" which entails capture of the aircraft under the terms of Article 53. Some kinds of unneutral service involve actual employment in the enemy's service, and the persons engaging therein would therefore be liable to detention as prisoners of war under the earlier parts of Article 37. There are, however, categories of unneutral service in which there is not this direct employment by the enemy, but in which, nevertheless, the damnified belligerent can reasonably claim the right to treat the persons responsible as prisoners of war. A similar right could also be claimed in certain of the more serious cases of carriage of contraband or breach of blockade. In the case of enemy aircraft, the "special and active assistance" will consist largely of service which, if carried out by a neutral aircraft, would be regarded as unneutral service. The conveyance by private enemy aircraft of officers or others in the enemy's service, or of dispatches for the enemy, would be cases in point. In land war civilians who render assistance to the enemy as transport drivers, whether under hire or requisition, are not detained as prisoners of war.¹ The circumstances of air warfare and in particular the more potentially damaging result to the other belligerent of the conveyance by air of belligerent *personnel* or dispatches, justify the adoption of a different rule. Usually, no doubt, the persons rendering the services in question will be in the enemy's employment, and will therefore be liable to detention in any case, but this will not always necessarily be so, and it is to meet the cases in which a pilot or other occupant of an aircraft has clearly been engaged in assisting the enemy, but is not, in virtue of his own position and independently of the act in question, liable to be made a prisoner, that the penultimate paragraph of Article 36, and the last paragraph of Article 37, are framed.

¹ Oppenheim, *Int. Law*, ii. 174, note 2; Oppenheim and Edmonds, *Land Warfare*, p. 26, note (a). Fauchille-Bonfils (*Droit Int.*, ii. § 1121), however, would apparently regard such civilians as liable to capture: "si un habitant rend des services à l'armée, par exemple, lui sert de messager, il sera soumis aux lois de la guerre, et fait prisonnier, s'il se laisse surprendre au cours de sa mission."

Participation in hostilities or in espionage.—One of the most damaging services which the occupant of an enemy or neutral aircraft could render to a belligerent would be the "transmission during flight of military intelligence for the immediate use of a belligerent." Such transmission is declared by Article 16 to amount to an act of hostilities, and the person responsible is accordingly liable to a penalty more serious than that of mere detention as a prisoner of war. He can be brought before a military court for trial as a war criminal. Neither Article 36 nor Article 37 contains any reservation upon the question of participation by unqualified belligerents in hostilities or upon the question of espionage. It is clear, however, that the belligerent who captures a neutral or enemy aircraft whose occupants have engaged in either hostilities or espionage, is justified in depriving them of the rights to which they would have been entitled, if they had not so engaged, under the terms of Articles 36 and 37, and in bringing them to trial. A reservation to this effect must necessarily be implied in each of the articles if the capturing belligerent's right to punish persons guilty of war crime or espionage is to be preserved.

Notification of neutral nationals paroled.—The provisions in the final paragraph of Article 36 are based on those of Article 7 of The Hague Convention relative to certain Restrictions on the Right of Capture in Maritime War.

Treatment of civilians as prisoners of war.—The purpose of Article 38 is to ensure that civilians captured under the terms of Articles 36 and 37 shall receive during their detention treatment not less favourable than that accorded to prisoners of war. It is clearly open to the capturing belligerent to subject them to a *régime* as much milder than that of combatant prisoners as he may desire. The minimum quality of treatment (if one may so express it) which must be accorded is that to which corresponding grades in the armed forces have a right during captivity.¹ The principle embodied in the provision is

¹ It does not, however, follow that civilians of a standing corresponding to that of officers in the army would be entitled, as are the latter under Art. 17 of the Land Warfare Regulations, 1907, to receive pay at the same rate as officers of the equivalent rank in the captor's army. On the other hand, civilians who are of the status of N.C.O.'s or soldiers, e.g. air mechanics, cannot be compelled to work, for Art. 6 of the Land Warfare Regulations, which authorises a belligerent to employ prisoners of war, is held to apply only to combatant prisoners. Mr. Tennant, Under-Secretary of State for War, stated in the House of Commons on 1 March, 1916: "Civilian prisoners cannot be forced to work otherwise than in the maintenance of their camps. I understand that the German Government enforces no labour on interned civilians." Mr. Hope, again, stated in the House on 20 March, 1917: "According to inter-

TABULAR STATEMENT OF TREATMENT OF CREWS AND PASSENGERS OF ENEMY AND NEUTRAL AIRCRAFT.

	CREWS.				PASSENGERS.			
	Enemy nationals.		Neutral nationals.		Enemy nationals.		Neutral nationals.	
	In service of enemy	Not in enemy service but fit for military service.	Neither in service of enemy nor fit for military service.	In service of enemy.	Not in enemy service but fit for military service.	Neither in service of enemy nor fit for military service.	In service of enemy.	Not in service of enemy.
ENEMY AIRCRAFT—								
1. Military	P.W.	None. ¹	None. ¹	P.W.	None. ¹	P.W. ²	P.W.	P.W. ²
2. Public non-military devoted exclusively to passenger transport . .	P.W.	None. ³	None. ³	P.W.	None. ³	Released.	P.W.	Released.
3. Other public non-military	P.W.	None. ³	None. ³	P.W.	None. ³	P.W. ²	P.W.	P.W. ²
4. Private	P.W.	P.W.	P.W.	P.W.	Released on parole.	Released.	P.W.	Released.
NEUTRAL AIRCRAFT—								
1. Military	The question would not arise, neutral military aircraft not being liable to visit.							
2. Public non-military employed for customs or police purposes								
3. Other public non-military ⁴ }	The question would not arise, such aircraft being liable only to visit for the verification of their papers.							
4. Private								
	P.W.	P.W.	P.W.	P.W.	Released.	P.W.	Released.	Released.

("P.W." = Prisoners of War.)

¹ Under Art. 14 of the Air Warfare Rules the crew of a military aircraft must be exclusively military.

² Such a passenger must be presumed to be of importance to the enemy state, otherwise he would not be conveyed in an enemy public aircraft in time of war. (Passengers in public passenger-aircraft are specially treated.)

³ The crew of an enemy public aircraft must necessarily be in the enemy's service.

⁴ Since such aircraft are treated as private aircraft, their crews and passengers should strictly be treated like those of private aircraft. It is, however, not improbable that belligerents will hesitate to detain the crews, seeing that they are in a neutral state's employment, or such passengers as are in similar employment.

Release may be delayed if the capturing belligerents' interests so require; and the right to release is liable to forfeiture if the person concerned has rendered special and active assistance to the enemy in the light in which he is captured.

whether there is a corresponding duty on the neutral State to prevent them from doing so.”¹ No doubt upon the subject is possible in view of the practice of the great war. That practice has created a rule of international law which must be regarded as being as firmly established as it is possible for such a rule to be.

The precedents of the great war which established the rule of prohibition of belligerent entry have been given in some detail by the present writer in a former book,² and further information upon the subject is to be found in the standard post-war books on international law.³ The rule itself is now sufficiently settled, and the writer will confine himself here to giving some facts and explanations which are not to be found in the books referred to, and may be usefully recorded.

The practical argument for refusal of entry.—The pre-war argument for refusing to belligerent aircraft the right to circulate in neutral atmosphere, namely, that such a right must be accorded to both or neither of the belligerents, and that if accorded to both there must always be the danger of conflicts above neutral soil, with consequent danger to life and property below, received a concrete confirmation in an occurrence of the war. In December, 1917, it was reported that an aerial combat took place over Swiss territory, and that as a result a good deal of damage was caused near Muttentz by the fall of bombs. Other combats also occurred over neutral territory—over Aardenburg (Zeeland), for instance, in January, 1918; over Cadzand in April, 1918; and over Ameland in July, 1918.⁴ The fact that such incidents can occur is the best answer to the question which has been asked⁵—Why should

¹ P. H. Winfield in 7th edition of T. J. Lawrence's *Int. Law*, 1923, p. 638. The same writer (at p. 619) states that “aircraft and their crews landing on neutral territory during the great war were as a rule interned, but this apparently did not apply to crews of such aircraft rescued on the high seas and brought into neutral territory.” It will be seen from the precedents given later in the present chapter that crews of aircraft rescued on the high seas were interned if the rescue was effected by a neutral warship.

² Spaight, *Aircraft in Peace and the Law*, 1919, pp. 1-4, 203-15.

³ See, e.g., Garner, *Int. Law and the World War*, i. 471-8; Oppenheim, *Int. Law*, ii. § 341 (a); Fauchille-Bonfils, *Droit Int.*, (1921), ii. § 1476 (16-19); Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, pp. 566-89. It need hardly be pointed out that “neutral” territory which is *de facto* in enemy occupation ceases legally to be neutral and becomes enemy territory. The Luxembourg station was bombed repeatedly by our airmen in the late war (see British official *communiqués* of 25 and 28 March, 1918, 5 and 11 April, 1918, and 8 July, 1918).

⁴ See *The Aeroplane*, 23 January, 1918, and *Flight*, 25 April and 4 July, 1918.

⁵ By Mr. C. G. Grey, in *The Aeroplane*, 28 April, 1915.

not the maritime rule of entry of neutral jurisdiction apply to aircraft? The answer is, in brief, that the circumstances are dissimilar, and that the practical objections to allowing entry of aircraft outweigh any advantages that would result from applying the naval rule. The question has often been considered, and the general conclusion has been in favour of prohibition of entry.¹

No exception made for force majeure.—Attention may also be drawn to the fact that the double rule, first, that belligerent entry should be actively prevented; secondly, that aircraft (and their *personnel*) nevertheless effecting entry, should be interned, was applied to cases of error, *force majeure*, or distress, as well as to those in which aircraft tried deliberately to make a "short cut" through neutral atmosphere. It was partly because of the prevailing fog,² partly because of injuries received,³ that the German airship L. 19 was making for the Dutch coast when she was disabled by Dutch gun-fire on 1 February, 1916. As a result of the further damage inflicted by the Dutch gunners, the airship sank in the North Sea with all her crew, after a vain appeal to the English trawler *King Stephen* for assistance. The Germans complained of Dutch "inhumanity" in firing at a disabled aircraft seeking asylum, and if, as they alleged, the airship clearly displayed its intention to land, there was perhaps some ground for the complaint. Still more reason for complaint arose when the Dutch soldiers tried to machine-gun the French captain Manginaud as he flew slowly and in evident difficulties, with his tank pierced by a bullet, to the Dutch coast.⁴ The Netherlands Government and its troops certainly applied their rule without fear or favour. German aircraft were fired at again and again when they ventured across the frontier, and at least three were shot down.⁵ If the Dutch gunners' action was perhaps a little drastic and

¹ See, for instance, the writer's *Aircraft in War*, 1914, pp. 65-71; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1476 (12-17); Garner, *La réglementation de la Guerre aérienne*, in *Revue de Droit Int.*, 1923, pp. 398-400; Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, pp. 576-89.

² Scheer, *Germany's High Seas Fleet in the World War*, Eng. trans., p. 106.

³ Rolland, *op. cit.*, p. 581.

⁴ *La Guerre aérienne*, 12 April, 1917, p. 341.

⁵ German aeroplane on the Texel, 6 August, 1917; German aeroplane at Boerta on 18 August, 1917; German seaplane (by torpedo boat) at Cadzand, 25 September, 1917. A German airman is stated to have been wounded by Dutch troops at Sluis on 13 March, 1917, but managed to land in Belgium. In March, 1915, a German aeroplane was forced by the fire of Dutch troops to land near Goes and was interned, with its two occupants, but does not appear to have been actually hit.

wanting in discrimination, this was probably inevitable in the application of a rule which, if too gently put into practice, might have become a dead letter. Holland saw to it that her neutrality was respected.

No exception for error.—The Swiss troops also fired upon belligerent aircraft crossing the frontier in error. The instructions issued by the Swiss Government to its troops on 4 and 10 August, 1914, allowed fire to be opened on foreign aircraft only on an officer's order. Subsequently, on 22 April, 1916, the order was modified, and fire could be opened without an order from an officer. Two years later arrangements were made for sending up signal rockets whenever a belligerent airman intruded upon Swiss territory; if he did not then immediately turn back, he could be fired upon.¹ The Dutch authorities were equally firm in maintaining the integrity of their atmospheric rights. In a "note" of 10 July, 1915, the Netherlands Government affirmed its right to fire immediately upon belligerent aircraft flying over Dutch territory, and a further "note" of 18 March, 1916, repeated the earlier warning, and added: "Considerations of humanity may lead the authorities to defer the resort to force until the aviator has been warned that he is above neutral territory, but no such warning is obligatory."²

One case did, indeed, occur of the relaxation of the rule that a belligerent military aircraft landing even in error in neutral territory must be interned. In February, 1916, an Italian machine in charge of a civilian tester landed near Lugano; it was released because, in the words of the Swiss Supreme Command, it was not engaged in any warlike operation, and was unprovided with the means of carrying out even a simple reconnaissance.³ It was regarded, in fact, as not being a *military* aircraft. But this was a unique case. The rule of internment was universal, and no exception was made for error, distress, or *force majeure*. Thus, a French pilot who lost his way in a fog and came down at Porrentruy on 3 April,

¹ See *Daily Mail*, 13 April, 1918, as to the signal rockets. For the earlier orders, see Fauchille-Bonfils, *Droit Int.*, ii. § 1476 (16). In June, 1918, the Swiss Government set up a large federal cross, lighted by electricity, near Porrentruy (*Flight*, 27 June, 1918). Swiss troops fired upon and wounded a German airman on 28 October, 1918.

² See the present writer's *Aircraft in Peace and the Law*, 1919, pp. 204-5. Instances in which belligerent military aircraft were fired upon by neutral troops are given in the same book, pp. 213-15.

³ See *The Aeroplane*, 16 February, 1916; Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 584.

1915, was interned with his machine.¹ Another French pilot, Adjudant Jardin, who lost his way in heavy weather while returning from a raid upon Essen, was similarly interned.² Other similar cases could be quoted. The land war rule that belligerent troops who cross a neutral frontier in proved error are exempt from internment if they leave again at once, was not extended to air warfare. This is the more remarkable when one remembers how much easier it is for air forces than for land forces to lose their way. It is well known that a British F.E. 2D biplane landed on 31 May, 1916, at Lille aerodrome (then in German hands) in mistake for St. Omer,³ and that later in the war a new Handley-Page bomber was similarly "delivered" to the Germans as a result of the pilot's mistaking Ghent for Dunkirk.⁴

Desertion by air.—There does not appear to be any sound reason why the rule which subjects belligerent aircraft landing in neutral territory to internment, with the crews, should not be applied to the case of desertion by air. In land war, as stated later in this chapter, deserters crossing a neutral frontier even in a body are not interned. But the land war practice is the not wholly logical result of an old tradition, and it is much to be desired that, in air warfare, the rule prescribing internment in all cases of belligerent air entry should be maintained in its integrity to the utmost degree possible. It is unfortunate that a precedent in favour of the opposite view was set by Denmark in the late war. She released the four "deserters" who flew from a German aerodrome into Denmark in June, 1918, and returned the two aeroplanes, in which they came, to Germany—apparently on the ground that the machines were "stolen property."⁵ Probably the Danish authorities were influenced by the consideration that Professor Nicolai, one of the deserters, was a famous pacifist, whose

¹ *La Guerre aérienne*, 25 October, 1917. The pilot was the well-known Georges Madon.

² *Ibid.*, 28 March, 1918, p. 325.

³ See Report of Mr. Justice Bailhache's Committee on the R.F.C., given in *The Times*, 21 December, 1916. The incident was the subject of a question in the House of Lords on 27 June, 1916, and in the House of Commons on 4 July, 1916.

⁴ *La Guerre aérienne*, 17 October, 1918, p. 787; Richthofen, *Der rote Kampfflieger*, 1917, p. 183. Three photographs, reproduced from a German paper, of the Handley-Page aeroplane which fell into the hands of the Germans "near Laon" may be seen in *The Aeroplane* for 21 February, 1917. The machine is seen to be entirely intact.

⁵ *The Times*, 6 August, 1918, from the *Ekstrabladet*, Copenhagen. See also *The Aeroplane*, 3 July and 21 August, 1918.

objections to German methods were notorious, and they may have regarded the case as being analogous rather to civilian than to military air entry. If the practice were to be established that the crew of an aircraft may be released and the machine returned to the belligerent State owning it, in every case in which belligerent military airmen landing in neutral territory claim to be deserters, an easy way would be opened for escape from the liability to internment in even the normal cases of belligerent air entry. The belligerent airman would enter neutral territory the more readily if he knew that, by means of a little subterfuge, surely excusable in the circumstances, he could secure that his machine was returned, and that he himself—ceasing to be a “deserter” after he had been released—could return also to his own service after a while.

The Rules formulated at The Hague, 1923.—Provisions confirming the practice of the late war have now been embodied in the Air Warfare Rules drawn up at The Hague in 1923. The pertinent Articles are the following :—

Art. 39.—Belligerent aircraft are bound to respect the rights of neutral Powers and to abstain within neutral jurisdiction from the commission of any act which it is the duty of a neutral to prevent.

Art. 40.—Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral State.

Art. 42.—A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft, and to compel them to alight if they have penetrated within such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

Belligerent military aircraft within neutral jurisdiction on the outbreak of war.—It should be observed that under the terms of Article 42, a neutral State would be bound to seize and intern a belligerent military aircraft that may be within its jurisdiction upon the outbreak of hostilities. This is expressly stated in the Commission's Report. The fact that the aircraft will be within neutral jurisdiction with the consent of the neutral State, given *ad hoc*, does not affect the position. The other belligerent, not having been a party to that consent, cannot be prejudiced by it. The question is, however, largely an academic one. It is very unlikely that a State would allow its military aircraft to enter another State's jurisdiction at a

time when its relations with that or a third State were strained and war was possible.

The case of distress.—It was agreed by the Commission of Jurists that the obligation to prevent the entry of belligerent military aircraft was to be regarded as being subject to the neutral State's moral duty to grant succour to airmen in distress. As already explained, there is in practice some difficulty in differentiating between cases in which the reason for entry is genuine distress, or some similar cause such as engine failure or exhaustion of fuel which might lead to disaster, and those in which there is a deliberate attempt to penetrate in order to secure some military advantage or to escape from superior forces. The highest that one can put the neutral obligation is that asylum should be granted in all cases of evident distress, so far as the circumstances allow this obvious concession to humanitarian claims to be made. The neutral authorities remain bound, of course, to apprehend and intern the aircraft and its crew in such cases, as well as in those of error on the part of the airmen, loss of way, or miscalculation of the exact boundary line. A strict interpretation of the rule prohibiting entry is essential in the interests of neutrals themselves, and it is well that belligerent aircraft should be taught to keep their distance from the frontiers of peaceful neighbouring States. The experiences of frontier towns like Zierikzee, Goes, and Chaux-de-Fonds in the late war are a warning of the dangers to be expected from the too free approach of belligerent airmen to neutral borders.

The internment of matériel.—Not only the aircraft and its crew and passengers (all of whom will normally be military persons) but also the equipment and contents of the aircraft must be interned. The term "aircraft" in Article 42 of the Air Warfare Rules is to be read as including everything that it carries, whether fixed equipment or armament or loose and removable munitions or stores. All this *matériel* must be stored under arrangements made by the neutral State, whose expenses in preserving it from deterioration, fire, etc., are recoverable from the State to which it belongs as incidental expenses of the internment.¹ The question whether the interned *matériel* may be sold is not free from doubt. The question arose in at least one case in the late war. In June, 1915, the Swiss Government approached the French Government with a request for

¹ Art. 12, *Land War Neutrality Convention*, 1907.

the purchase from the latter of a French aeroplane which had landed in Switzerland and was interned. France declined to sell the machine but offered to hand it over as a free gift, in return for the numerous services rendered by Switzerland. Professor Rolland considers that a sale would have been contrary to neutrality, for it would have given France the means of providing another machine to replace that which, by its internment, she had lost.¹ When one considers the value of a single aeroplane and the relation of that value to the cost of maintaining the enormous military forces of a great State, one doubts whether Professor Rolland's objection is one of much practical importance, though in theory it is no doubt sound.

In practice there would not appear to be very much objection to permitting the sale of a few aeroplanes. An arrangement of this kind is, indeed, desirable where the stored *matériel* is likely to deteriorate or perish, or, perhaps, to become obsolescent. The neutral State is bound to observe impartiality in agreeing to any arrangement for such sales.

Restoration of interned matériel.—If no such arrangement is made, the aircraft, etc., must be restored to the belligerent State whose property it is after the termination of the war. The conditions were in this respect exceptional at the end of the great war. Under the terms of the Treaty of Versailles all German aircraft and aircraft stores were to be surrendered to the Allied and Associated Powers (Arts. 202 and 210, Peace Treaty). Germany was forbidden by the provisions of the Treaty to maintain an air force and her machines which happened to be in the hands of neutral States became, upon their restoration, property at the disposal of the Allied Powers. Practically all of them were broken up by the Inter-Allied Aeronautical Commission of Control, in common with the mass of German aircraft *matériel* in Germany.

The storing of the interned matériel.—The neutral State is bound to store the aircraft, etc., under such conditions that the owning belligerent is not prejudiced by the disclosure of his special designs or secret devices to the enemy as a result of the internment. That this rule was not always observed in the late war is shown by the fact that in October, 1917, a statement issued by the War Correspondents' Headquarters with the

¹ Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 586. See also Lacroix, *Le Domaine aérien et la Guerre*, p. 400.

French Army, giving information which "recently came to the knowledge of the French General Staff," contained the following item of news :—

"A big German bombing machine which lately landed in Holland was fitted with an electrical installation, driven by motor, for the purpose of warming the airmen."¹

Unless this information was obtained (by a French agent) in the (probably brief) interval between landing and internment, Germany had some cause for complaint here.

Destruction of aircraft to prevent its internment.—If a design or particular device is so secret that it is undesirable to disclose it to even the neutral State's experts, a belligerent airman is entirely within his rights in destroying his machine, or any part of it, upon having a forced landing in neutral territory or being otherwise in danger of internment. The officer of the Royal Naval Air Service who, under the pseudonym of "P.I.X." has told us something of its inner history, relates that when a flying-boat came down with engine failure near the Hook of Schouen in October, 1917, the pilot sank the flying-boat by making holes in the hull and in the water-tight compartment in the tail, before he was taken off (with his engineer and wireless operator) in a Dutch gunboat which came to his assistance. "So far no neutral or enemy Power had had a boat to examine at leisure."² Another R.N.A.S. officer who came down through engine trouble near Terschelling in 1918, beached his flying-boat, and burnt it, before being interned.³ When three of our aeroplanes landed in Denmark after the raid upon Tondern in July, 1918, one of the airmen is stated to have destroyed his machine after coming to ground.⁴ The occupants of German machines which had forced landings in Holland also destroyed their machines on various occasions. The crew of a German seaplane which had landed near Holten on 31 October, 1917, burnt it before they were arrested by a

¹ *Flight*, 25 October, 1917.

² "P.I.X.," *The Spider Web*, 1919, p. 173.

³ *Ibid.*, p. 114. This is probably the case referred to in Admiralty *communiqué* of 9 August, 1918: "One of our machines was forced to land in Dutch waters. The machine was destroyed and the crew interned." There was, however, apparently an earlier case of the kind in the same year, for an unofficial report of the *Evening Standard*, 8 June, 1918, stated that a British machine (presumably a flying-boat) had landed in the sea near Holland, that its occupants, three officers and two men, burnt it, and that they then waded to the shore, being subsequently interned.

⁴ See *Daily Mail*, 22 July, 1918, quoting Exchange message from Copenhagen.

Dutch sentry and taken to Deventer.¹ Two German airmen who landed near Oldenzaal at the end of January, 1918, destroyed their machine.² Again, in May, 1918, the occupants of a German seaplane which landed near Kolding set their machine on fire.³ In April, 1918, the occupants of a French seaplane which had a forced landing near Bitthem similarly burnt their machine before being interned by the Dutch authorities.⁴ It was probably for the same reason that when Capt. Gunther Plüschow, the only aviator at Tsing-Tao, escaped from that town on 6 November, 1914, just before it surrendered to the Japanese and British investing forces, and landed at Hai-Tchon, he dismounted his engine, which he handed over to the Chinese mandarin there "according to the rules of neutrality" but burnt the aeroplane itself.⁵

Entry of neutral jurisdiction by sea.—The rule that a belligerent military aircraft entering neutral jurisdiction must be interned applies whether the aircraft flies into neutral territory or waters, or "taxies" into them, or enters them by any other means. Thus a German seaplane which had had a forced landing in the high sea and had then drifted upon the shores of the island of Schiermonnikoog, was interned, with its crew, by Holland in August, 1914.⁶ There appears to have been no actual instance in the war of a case which a writer has raised as a "nice question of international law."⁷ Suppose, says this writer, a "supermarine" (a large flying-boat) came down upon the sea, "shed" its wings, and taxied into a neutral port. "It would obviously," he says, "be entitled to treatment under international maritime law," and consequently the question arises: When does a seaplane cease to be an aeroplane and become a boat? The present writer submits that in the case imagined the "supermarine" would not be entitled to be treated as a marine craft. Even shorn of its wings—if such a condition were really practicable—it would still remain unmistakably an aircraft and should be governed by the rules

¹ *Flight*, 8 November, 1917; *The Aeroplane*, 7 November, 1917.

² *The Times*, 1 February, 1918, quoting from the *Handelsblad*.

³ *Flight*, 30 May, 1918; *The Aeroplane*, 22 May, 1918.

⁴ *The Times*, 13 April, 1918; *Flight*, 18 April, 1918.

⁵ See Capt. Plüschow's own story, *Les Aventures de l'Aviateur de Tsing-Tao*, in *La Vie aérienne*, 21 August, 28 August, 4 September, 18 September, 1919, pp. 540-2, 553-5, 571, 606. (See also *La Guerre aérienne*, 1 March, 1917, p. 256.) Capt. Plüschow tells the story more briefly in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, p. 567.

⁶ *Netherlands Yellow Book*, September, 1916, pp. 144-6; Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1476 (19).

⁷ Mr. C. G. Grey, in *The Aeroplane*, 28 April, 1915.

applicable to aircraft. To allow an aircraft to alter its character in such a manner for the purpose of entering neutral jurisdiction would be to make those rules a dead letter.

Aircraft carried on warships.—There is, however, one exceptional case in which an aircraft entering, not under its own power, but as a mere constituent (as it were) of a larger self-propelled unit is treated under the rules applicable to that unit rather than under those governing the entry of aircraft. This is the case of aircraft borne on a warship's deck. Aircraft are so carried by battleships and battle-cruisers and, more especially, by aircraft-carriers, which are warships specially fitted to transport assembled aeroplanes and, though serving that one purpose, are still commissioned naval vessels and are entitled to be treated as such. Another kind of aircraft which may be carried by a warship is the observation-balloon which is sometimes moored to the deck. In all these cases the presence of the aircraft on board is regarded as prejudicing in no respect the claim of the vessel itself to those rights or privileges which are allowed by the maritime rules of neutrality.

Article 41 of the Air Warfare Rules provides that :—

“ Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessels.”

The source of the Air Warfare Rule.—The archetype or origin of Article 41 is the provision upon this subject which the present writer proposed in his draft code, prepared before the late war.¹ Article 13 of that code read :—

“ . . . An aircraft which is permanently assigned to a battleship and usually accompanies it, shall be regarded as forming part of the battleship so long as it remains in actual contact therewith.”

The American project submitted to the Commission of Jurists at The Hague in 1922 contained the following Article :—

“ An aircraft permanently assigned to a vessel of war and usually accompanying such vessel, shall be regarded as a part of the vessel so long as it remains in physical contact therewith.”²

This provision was adopted by the *sous-commission* at The Hague, but was subsequently amended to the form in

¹ Spaight, *Aircraft in War*, 1914, p. 119.

² Capitaine de Vaisseau Yvon, in an article on “ *La Guerre aérienne* ” in the *Revue juridique internationale de la Locomotion aérienne*, June, 1924, refers to this proposal of the American delegation to the Commission of Jurists as “ une proposition émise en premier lieu par M. Spaight.”

which Article 41 now appears. So far as the writer knows, no similar provision is to be found in any of the pre-war projects; at least nothing of the kind appears in the draft codes of M. Fauchille,¹ M. d'Hooghe,² Professor von Bar,³ M. de Moynes,⁴ or of the Institute of International Law,⁵ nor do the writings of Dr. H. D. Hazeltine, M. Catellani, M. Bellenger, M. Philit, or Baron de Staël Holstein, all prior to 1914, appear to include any such provision.

Criticism of the Rule.—There is the objection to Article 41, as it stands, that it applies only to *ship-carried* aircraft. The Article as originally conceived and drafted covered also flying-boats and large sea-going aircraft generally when these are in tow by or otherwise actually attached to their mother-ship. There is no reason to suppose that the small ship-aeroplane will be the only type used in naval air operations. The probability is that large flying-boats, which are really permanently water-borne craft, will also be used, and if these are moored alongside a warship and, for the time, in close contact with it, the writer suggests that they should be regarded as part of the warship, equally with aeroplanes carried on the ship's deck. The large flying-boat is much more akin to a marine craft than is the deck-flying aeroplane, and it and its mother-ship, in combination, appear to be entitled to be treated as a single marine unit at least as much as the aircraft carrier *plus* its aeroplanes.

Departure from an aircraft carrier in neutral jurisdiction of its aircraft.—Neither Article 40 nor Article 41, it will be observed, covers explicitly the question whether an aircraft is allowed to leave an aircraft carrier or other warship which is legitimately within a neutral State's jurisdiction either at the outbreak of war or in the course of hostilities. In such a case the aircraft will not have, *quâ* aircraft, "entered" neutral jurisdiction; it will have come there as part and parcel of the warship. It is obviously incumbent upon the neutral State, however, to prevent the circulation within or departure (by air) from its territory of an aircraft which has originally entered on ship-board. It will be seen later that a neutral State's obligation under Article 47 of the Air Warfare Rules to prevent aerial

¹ *Annuaire de l'Institut de Droit international*, 1911, vol. xxiv.

² E. d'Hooghe, *Droit Aérien*, 1912.

³ *Annuaire de l'Institut de Droit international*, 1911, vol. xxiv., pp. 132-3.

⁴ Le Moyne, *Le droit futur de la Guerre aérienne*, 1913.

⁵ *Annuaire de l'Institut de Droit international*, 1911, vol. xxiv.

observation from within its jurisdiction, for the benefit of one belligerent, of the forces, movements, etc., of the other, extends to such a case as that of an observation-balloon moored to the deck of a belligerent warship lying in its ports or waters, and the neutral authorities would, therefore, be entitled and bound to require the commander of the warship to keep the balloon close to the deck if there was any danger of its being able from a more elevated position to engage in observation work of the kind referred to.

Flying ambulances.—There is one case, and one only, in which a belligerent military aircraft may legitimately enter and depart from neutral jurisdiction under its own power. This is the case of the "flying ambulance." The Air Warfare Rules contain a provision which has the effect, or, at any rate, was intended to have the effect, of placing such "hospital aircraft" on the same footing as "hospital ships" in this respect. The provision is as follows:—

Art. 17.—The principles laid down in the Geneva Convention, 1906, and the Convention for the adaptation of the said Convention to Maritime War (No. X. of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

Flying ambulances may be, and probably usually will be, military aircraft, borne on the military establishments of the State owning them. Neither Article 39 nor Article 41 of the Air Warfare Convention contains any exception in their favour from the rule that belligerent military aircraft are forbidden to enter neutral jurisdiction, and that if they do enter, they must be interned by the neutral State. The reason for the omission of such a provision is apparently that the Convention for the Adaptation of the Geneva Convention to Maritime War, the principles of which Convention are applicable to flying ambulances,¹ gives no *right* to a belligerent to land his sick and wounded at a neutral port, and that any qualification of the provisions of Articles 39 and 41 would seem to imply that a

¹ Art. 17, Air Warfare Rules. The Geneva Convention, 1906, also referred to in that Article, does not deal with the deposit of the sick and wounded of land forces in neutral territory; this question is dealt with in the Land War Neutrality Convention.

right of entry for flying ambulances was recognised. It must, however, be observed that the case is not quite parallel with that arising in naval warfare. The sick and wounded are in the latter case deposited with the neutral authorities' consent by craft which are not definitely forbidden, as are belligerent military aircraft, to enter neutral jurisdiction under any circumstances. If it was intended that a neutral State should be free to allow flying ambulances to deposit belligerent sick and wounded in its territory, it would have been better to have expressed this intention clearly by means of a slight modification of Articles 39 and 41.

Sick and wounded landed by a flying ambulance in neutral territory.—As regards the sick and wounded carried in the flying ambulance, they, like the crew, would appear not to be subject to internment if the aircraft merely touches (e.g. for supplies) at a neutral port, but if they are landed there (with the neutral State's consent) they must be interned; and the same rule applies to any *enemy* sick and wounded similarly landed by a belligerent's flying ambulance, unless there is a special agreement to the contrary between the neutral State and *both* belligerents.¹ The rules upon this subject applicable to flying ambulances are the same (it is to be presumed) as those applying to sick, wounded, or ship-wrecked sailors landed by their own or the enemy's warships at a neutral port.

Landing in neutral port of airmen rescued by a warship.—If a belligerent military airman is rescued by one of his own country's (or its Allies') warships and is then taken into a neutral port but not landed there, he is treated in no way differently from the other members of the warship's crew and no obligation rests upon the neutral State to request that he be landed for internment. If, however, he is landed at the neutral port—for instance, in order that his injuries may receive immediate surgical treatment—he must be interned; and he must also be detained, in common with the rest of the crew, if the warship does not leave within the time allowed for its stay in the neutral port.

If a belligerent military airman is picked up by one of the *enemy's* (or its Allies') warships outside neutral territorial waters and is taken into a port of the neutral State, that State is again under no obligation to ask that he be handed over. If, however, he is landed with the neutral State's consent, then,

¹ Art. 15, The Hague Convention, No. 10, 1907.

unless there is an arrangement to the contrary between the neutral State and both belligerents, he must be interned. If, again, the warship picks him up *inside* the neutral State's territorial waters, it would seem that the neutral authorities are bound to request that he be handed over for release,¹ for the capture amounts to an act of belligerency carried out within neutral jurisdiction and its effects should be annulled. Again, if the warship overstays her permitted period of visit in the neutral port and is, therefore, detained, any prisoners (including airmen) on board would be detained along with the crew, unless captured (as in the case just mentioned) within the neutral's jurisdiction, in which case the prisoner-airman should, it is submitted, be released.²

Airmen rescued by neutral vessels or aircraft.—When the rescue is effected by a *neutral* warship, the belligerent military airman's treatment is governed by Article 13 of The Hague Convention No. 10, 1907; he must be interned by the neutral State concerned. If he is rescued by a neutral military aircraft, a special provision of the Air Warfare Rules governs his case. This is Article 43 which provides :—

"The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into neutral jurisdiction by a neutral military aircraft and there landed shall be interned."

It will be observed that it is the neutral State at whose port the belligerent airman is landed that is bound to intern him, not (as in the case of rescue by a warship) the State whose craft rescues him. Normally these States will be one and the same. A military aircraft requires special or *ad hoc* permission to enter another State's jurisdiction and it would very rarely happen that the rescuing aircraft landed the belligerent airman in any territory but its own. If it did enter other territory, it would probably deposit the man there, and in that event the (neutral) State receiving him should be under obligation to intern him.³ The difference between the circumstances of air and sea conveyance, namely, that in the former case the

¹ If, however, the airman had himself been guilty of violating neutral sovereignty by descending within neutral waters, or had entered them in his aircraft, it would seem that he should be interned, not released, upon being handed over to the neutral authorities, in view of his own initial trespass upon neutral jurisdiction.

² See Oppenheim, *Int. Law*, ii. § 348a.

³ It would be impracticable, in the conditions of air transport, to forbid the neutral aircraft to land the rescued man in (1) his own or (2) the enemy's territory: when he would be (1) free, or (2) a prisoner of war.

rescued man does not (as he does in the latter) "live" upon the rescuing craft, justifies a difference also in the rule applicable.

No rule is laid down as to the treatment of the crew of a belligerent military aircraft who are rescued by merchant vessels (including trawlers, fishing-boats, etc.) or by a non-military aircraft, and brought into neutral jurisdiction. How ship-wrecked belligerent sailors are to be treated when rescued by merchant vessels and landed at neutral ports is not explicitly laid down in Hague Convention No. 10; but it is a reasonable inference from the express reference to warships in Article 13 of that Convention that the rescued sailors should be set free,¹ although one cannot say that there is any settled rule of international law upon the point. One may expect the air warfare rule to develop in the direction of exempting from internment, after landing, belligerent military airmen rescued on the high sea by uncommissioned ships or non-military aircraft of a neutral State.

Whether belligerent military airmen rescued by neutral public non-military aircraft and landed in neutral jurisdiction should be interned is an open question. Article 13 of the Convention of 1907 applies only to rescues by neutral warships; Article 43 of the Air Warfare Rules only to rescues by neutral military aircraft. Oppenheim points out that, although Holland exempted from internment belligerent *personnel* rescued by a public non-military vessel—a light ship—in the late war, analogy and principle are in favour of the application to persons so rescued of the same treatment as that applicable to those picked up by warships.² On a parity of reasoning, belligerent military airmen rescued by neutral non-military public aircraft and landed in a neutral State's jurisdiction ought to be interned. It is probable, however, that in this, as in other matters of international law, practice may not follow the lines of strict logic and that the Dutch precedent will govern rescues by neutral public non-military aircraft of belligerent airmen who are picked up outside the territorial waters of the neutral State. Such airmen, like those rescued by uncommissioned vessels, will consequently be released.

Instances of rescues in the late war.—A good many instances of the rescue of British airmen by neutral merchant vessels, trawlers, and fishing-boats, and a few of the salvaging of the

¹ See Oppenheim, *Int. Law*, ii. §§ 348a, 348b; Pearce Higgins, *The Hague Peace Conferences*, p. 390.

² Oppenheim, *op. cit.*, § 348.

aircraft itself, occurred in the great war. The first reported case appears to have been one of 14 December, 1914, when a flying officer and mechanic were rescued by the s.s. *Orange Nassau* from a wrecked British aeroplane; at first the officer and mechanic refused to leave the machine (which was eventually abandoned), fearing that they would be interned in Holland, but their apprehensions on this account appear to have been calmed and they were, in fact, at once released.¹ A few days later Squadron Commander J. W. Seddon's seaplane, No. 829, was rescued (on 17 December, 1914) near the Galloper Light by the Norwegian steamship *Orn* and taken, as were its two occupants, to Holland. The seaplane was interned, but Seddon and his companion were released.² Flight-Commander F. E. T. Hewlett, who was rescued by a Dutch trawler after the Cuxhaven raid on 25 December, 1914, was also released after a brief detention in Holland.³ M. Lafon, referring to this case, says: "The Dutch had the courtesy to liberate Commandant Hewlett in lieu of interning him, as would have been their right (*comme c'eut été leur droit*)."⁴ It was hardly, however, a matter of courtesy; rather it was one of unsettled international law and, on the naval analogy, there was considerably more reason for liberating the officer than for interning him. The Dutch authorities maintained throughout the war the attitude which they took up from the beginning.

It was officially announced by the Dutch Ministry of Marine on 29 September, 1917, that the two British aviators who were brought to Nieuwediep on 25 September by a Dutch fishing-vessel, after they had been obliged to come down on the open sea, had been set at liberty. Their machine, however, it was stated, had been seized by the Dutch authorities.⁵

The treatment of salvaged aircraft.—As regards the salvaged aircraft, which the Dutch authorities insisted upon detaining, although they released the *personnel*, the controversy between the two Governments upon the general question

¹ *The Times*, 15 December, 1914.

² Raleigh, *The War in the Air*, i. 365-7.

³ *Ibid.*, 405.

⁴ C. Lafon, *Les Armées aériennes modernes*, 1916, p. 242. Lacroix, *Le Domaine aérien et la Guerre*, pp. 407-8, contends that the conduct of a Swedish master who rescued two French aviators in the North Sea, in March, 1916, and liberated them on arrival at Dover, and of a Dutch master who rescued two German airmen and handed them over to two other German seaplanes which came to save them, was "irregular," though not involving Swedish and Dutch neutrality respectively. He holds that the rescued airmen should have been taken to Sweden and Holland respectively for internment. This view is certainly incorrect. The action in both cases was perfectly regular.

⁵ *Flight*, 4 October, 1917.

is set forth in White Paper "Cd. 8985." The Dutch argument was based on the provisions of the Maritime War Neutrality Convention, 1907, prohibiting the supply of warships, supplies, or war material of any kind by a neutral Power to a belligerent Power. The British rejoinder that these provisions were inapplicable to the case of the salvaged aircraft *matériel* was undoubtedly correct; yet the Dutch decision had something to be said in its favour.¹ The law upon the point—indeed, upon the whole question of belligerent air entry—was unsettled, but a rule was being created by practice, and to allow exceptions from it was unwise. Save when allocated to, and in contact with, a warship, which, itself for some purposes the "territory" of its State, may be regarded as imparting its own character to an aircraft carried upon it or lashed to it, belligerent military aircraft brought into neutral jurisdiction under whatever circumstances should, it is submitted, be subject to the one universal and inelastic rule that they must be detained by the neutral authorities. Relax that rule and the door opens to a host of possible exceptions and complications.

Rescues in neutral waters.—In the cases referred to in the second last paragraph the rescue was effected on the high seas. If a belligerent military airman is rescued by even a merchant vessel or non-military aircraft from his aircraft which has either descended in a neutral State's waters or has been driven into them by wind or tide, and is landed in that State's territory, he must be interned.² If, however, he is rescued in those waters by a merchant ship (e.g. an outgoing one) which lands him in some other State's port, then there appears to be no reason

¹ J. A. Hall (*The Law of Naval Warfare*, 1921, p. 178) considers that the Dutch contention as regards the seaplanes "seems to be more in accordance with the duties of neutrality, and if persons and property are to be placed on the same footing, it would be better policy to say that all should be interned rather than all be free; moreover, the release of survivors brought in by neutral ships does not appear a very well-founded practice." In other words, Mr. Hall thinks that Holland might legitimately have interned both the *personnel* and the aircraft. See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1476 (19), and Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, pp. 586-8.

² Denmark interned belligerent airmen rescued in her waters in the late war; on the other hand, Norway liberated the crew of the German airship L. 20 when it was wrecked on her coast in May, 1916. Denmark's action was the more correct (see Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 589). Provided the aircraft has actually entered the neutral State's territorial waters, the fact that the crew has left it when the neutral authorities intervene will not affect their liability to be interned. When a German seaplane dropped alongside a Belgian boat in Dutch waters in August, 1917, and put an armed N.C.O. as a "prize crew" on board, this man was captured by a Dutch patrol boat, which came up before the Belgian boat could be removed.

why he should be interned ; he has not violated the neutrality of the State of the port of landing by entering *its* territorial waters in an aircraft.

In the R.N.A.S. raid of 16 February, 1915, upon Ostend, Zeebrugge, and Bruges, Flight-Lieut. Murray had a forced landing and drifted in his aircraft into Dutch territorial waters. He fired a distress signal and a Dutch torpedo-boat came to his assistance and towed him ashore. He was interned. He lodged a protest against being so treated, on the ground that he "landed" outside territorial waters and drifted in ; but the Dutch action in interning him was entirely correct.¹ The mere fact of his being rescued by a Dutch *warship* made him liable to internment even if rescued outside Dutch waters, but, as he drifted in his aircraft into Dutch waters, he was equally so liable even if landed in Holland by a fishing-vessel which had rescued him in those waters.

It would be quite legitimate for belligerent military airmen to decline the assistance of neutral unofficial rescuers even within a neutral State's waters. A German seaplane landed on 13 February, 1915, on a mudbank between Schiermonnikoog and Ameland, owing to a snowstorm, and a Dutch lifeboat put out to its assistance. The two German officers refused to go on board the lifeboat, preferring to remain on the bank, and next morning the seaplane proceeded to Heligoland.² If a police-boat, or other official vessel, had been concerned, it would have been illegitimate for the airmen (whose aircraft had violated neutral jurisdiction) to decline to leave the seaplane and to submit to internment.

Entry of airman, without his aircraft, into neutral jurisdiction.—If, instead of entering the neutral State's waters in his aircraft, the airman abandons the machine outside those waters and saves himself by swimming ashore, he would, it is submitted, be exempt from internment.³

¹ *The Aeroplane*, 3 March, 1915, reproducing an account of Mr. Murray's experiences from the *Morning Post*. An editorial note states that his case "seems precisely analogous to that of Flight-Commander Hewlett, so presumably he is entitled to return to this country." But the cases were not analogous ; Flight-Commander Hewlett did not enter Dutch waters *in his aircraft*, and was not rescued by a neutral *warship*. The Admiralty report that "Flight-Lieut. D. Murray has since *reported himself* from Flushing" was misleading, for it implied that the officer had returned. As a matter of fact he was interned all through the war and appears in the list of officers repatriated at the peace.

² See *The Aeroplane*, 17 February, 1915 ; *Flight*, 19 February, 1915.

³ J. A. Hall (*The Law of Naval Warfare*, 1921, p. 177) considers that survivors of a sea engagement who make their way into neutral jurisdiction in their own

Illegitimate attack upon aircraft in neutral waters.—It is an open question whether, if a belligerent military aircraft descends in or drifts into neutral waters and is there (unlawfully) attacked by the enemy, the crew of the aircraft are liable to internment upon reaching the shore. Strictly, having initially violated the neutral State's marine frontiers, they should be interned; and it is to be noted that Denmark interned the survivors of belligerent armed vessels which were unlawfully sunk in Danish waters by enemy action in the late war.¹ It could, however, be held that the unlawful enemy attack, which must be regarded as a grosser violation of neutrality than the aircraft's entry of neutral jurisdiction, would justify the neutral state in liberating the victims of that attack and in thus discouraging the commission of acts of hostility within its waters.

Dismounted airmen crossing a neutral land frontier.—So far the questions considered have been those relating to the crossing by belligerent military aircraft or airmen of a neutral State's marine frontier. The corresponding question of the passage of such a State's land frontier remains to be considered. It is not quite so complicated. A belligerent military airman who, having landed in enemy territory, burns or abandons his machine there and escapes on foot into neutral territory is in the same position as a soldier, and his case is governed by the rules applicable to land warfare. In theory such a man should be interned by the neutral State, and at least one official manual lays down the rule that this should be done.² In practice, however, individual fugitive soldiers are not interned;³ the neutral State cannot be expected to exercise such a close control upon the passage of its frontiers that an obligation to apprehend and intern isolated individuals can reasonably be imposed upon it.⁴ Deserters, i.e. fugitives who have no intention of rejoining their national forces, are not, in any case,

boats or on rafts or wreckage should *not* be interned; but points out that Norway adopted a different view as regards the survivors of H.M.S. *India*. See also Oppenheim, *Int. Law*, ii. § 348a.

¹ See Oppenheim, *loc cit.*

² Swiss official manual, *Conventions internationales concernant la Guerre sur terre*, 1910, p. 53, note 26.

³ It is immaterial in practice whether the neutral authorities are aware of the escaped prisoner's identity or not. The editorial note in *The Aeroplane* of 4 August, 1915, is, therefore, incorrect when it states, with reference to the reported escape of Flight-Lieut. Howard from the prisoners of war camp at Neuenkirchen into Holland, "presumably Mr. Howard has, by disclosing his identity, succeeded in being interned."

⁴ See Oppenheim, *Int. Law*, ii. § 338.

interned. Under the land war rule, if a *body* of men—and it is a question of fact what number would amount to a “body”—cross the frontier of a neutral State and if they are not deserters but men whose intention it is to rejoin their national forces, the neutral State is bound to intern them. The position in regard to escaped prisoners of war is different. Article 13 of the Land War Neutrality Convention provides that “a neutral Power which receives escaped prisoners of war shall leave them at liberty.” Hence, even if a body of prisoners escape into neutral territory, and even if they fully intend to rejoin their forces, they must be left at liberty. A neutral State is not obliged to make good the deficiencies of a belligerent in the guarding of his prisoners of war.¹ The moment an escaped prisoner sets foot on neutral soil he is free. When two German soldiers crossed the Danish frontier to capture an escaped Russian prisoner (who was killed in the struggle to secure him), Germany expressed her “profound regret” for the incident and stated that if the man were alive he would have been handed over to the Dutch authorities.² Although normally left free to repatriate themselves, if escaped prisoners are allowed to remain in the neutral country, instead of returning to their own country, they may be assigned a particular place of residence.³

Prisoners and captured matériel held by troops seeking asylum.—A land force which seeks asylum in neutral territory may have prisoners of war (including captured airmen) with it. Those prisoners are entitled to their freedom once they enter the neutral State's territory.⁴ The force which has been holding them crossed the frontier, it is to be assumed, because otherwise it would have been destroyed or captured, and in that event the prisoners would have regained their freedom. Logically, the same rule, it may be thought, should apply to any captured *matériel*, including aircraft, held by the troops seeking asylum, for it, too, would have been recaptured in all probability and ought therefore to be released. It is not, however, so released; it is treated in the same way as the

¹ Fauchille-Bonfils, *Droit Int.*, ii. § 1462 (1). It was estimated that by November, 1917, there were about 15,000 German deserters in Holland and an even greater number in Switzerland. See *The Times*, 22 November, 1917.

² *The Times*, 16 February, 1917. The incident occurred on 1 November, 1916.

³ Land War Neutrality Convention, 1907, Art. 13.

⁴ If, however, they *remain* in the neutral State's territory, they may be assigned a particular place of residence (Land War Neutrality Convention, Art. 13).

ordinary *matériel* of the troops holding it and is interned. This question of the treatment of *matériel*, captured from one belligerent and held by the other belligerent's forces when they cross into neutral territory, was discussed at The Hague in 1907, and it was agreed that the case of *matériel* differed from that of *personnel*, for the former becomes definitively the property of the captor when taken, and could be destroyed by him if his own surrender or destruction was imminent, whereas prisoners must be spared.¹

Hospital convoys granted passage.—The circumstances are different when sick or wounded prisoners are brought into neutral jurisdiction by a hospital convoy to which the neutral State has granted (as it may) permission to pass through its territory. Here there is no presumption that the prisoners would have been speedily liberated if the neutral frontier had not been crossed. The reason for the grant of passage in such a case is the speedy evacuation of the sick and wounded, that is, a humanitarian reason, and prisoners who happen to be in the convoy are, therefore, treated differently from those held by a force seeking asylum. They are, indeed, removed from the convoy, but they are not given their freedom. Instead, they are "so kept by the neutral Power as to ensure their taking no further part in the military operations" (Art. 14, Land War Neutrality Convention). The same rule applies if sick or wounded men are taken from a hospital convoy of their own forces and deposited for some special reason (e.g. because they are too ill to be carried further) in the neutral territory. They, too, must be detained by the neutral authorities during hostilities. The remainder of the convoy, of course, simply passes through.²

Escape of prisoners into neutral territory in the great war.—

There appears to have been no instance in the late war of the grant of neutral passage to a belligerent convoy. The cases of the escape of prisoners of war into neutral territory were, however, extremely numerous; and there were also some instances in which airmen who had had forced landings behind the enemy's lines succeeded in making their way on foot, avoiding capture, to a neutral frontier. One of the earliest cases of the latter kind was that of Lieut. Mapplebeck, referred to in another chapter.³ Lieut. Mapplebeck, shot down in a

¹ See Spaight, *War Rights on Land*, 1911, p. 502; Oppenheim, *Int. Law*, ii. § 341; Fauchille-Bonfils, *Droit Int.*, ii. § 1462 (2).

² *Ibid.*, ii. § 1462 (4).

³ See p. 365.

bombing raid, escaped in disguise into Holland; "passing as an English electrician," says Major Turner, "he escaped being interned and eventually got across to England."¹ It is, however, doubtful whether, even if not disguised, an isolated fugitive officer such as he was would have been interned. Evasions from prisoners' camps in Germany and successful escape into Holland and Switzerland were quite common. Long distances were, in many cases, covered. Four French airmen (De Tascher, Papeil, Amiot, and Chemet) traversed 280 kilometres of German territory in seventeen days in escaping from Dillingen into Switzerland; the first three swam the Rhine successfully, but Chemet was drowned.² Commandant Ménard and Lieut. Pinsard covered a still greater distance—380 kilometres—in escaping from Ingoldstadt, also into Switzerland, spending sixteen days on the journey,³ and Major A. J. Evans, R.F.C., and Lieut. S. E. Buckley, Northants Regiment and R.F.C., accomplished practically the same journey, taking eighteen days.⁴

Another French pilot took ten days to escape into Holland,⁵ but the most remarkable exploit of this kind was probably that of an American citizen who was serving in the British flying corps and was captured in August, 1917. He escaped on 9 September, 1917, by leaping from a train near Strassburg, and after extraordinary adventures succeeded in reaching Holland on 19 November, thus spending seventy-two days on his journey.⁶ At first he wore British flying officer's uniform, but gradually replaced it by civilian garments acquired in various ways, until finally he could pass for a Belgian peasant. Another case is on record in which a British pilot covered 200 miles between a German prison camp and the Dutch frontier in Royal Air Force uniform—an almost incredible feat.⁷

¹ Major C. C. Turner, *The Struggle in the Air, 1914-18*, p. 28. See also G. V. Williams, *With our Army in Flanders*, 1915, p. 329, for Mapplebeck's experiences.

² *La Guerre aérienne*, 13 December, 1917, pp. 67-70, giving statement by De Tascher and Papeil. The escaped prisoners were kindly received by the Swiss *douaniers*.

³ *Ibid.*, 13 September, 1917, pp. 694-5.

⁴ A. J. Evans, *The Escaping Club*, 1921, pp. 152-95. They escaped from the train north of Nuremberg while being conveyed from Ingoldstadt to Zorndorf. The amazing inefficiency of the Germans in guarding their prisoners is well brought out in Major Evans's book, *passim*.

⁵ *La Guerre aérienne*, 9 August, 1917, p. 614.

⁶ Lieut. P. O'Brien, *Outwitting the Hun*, 1918. For a still stranger story of an escape from captivity, see Lieut. E. H. Jones's *Road to En-dor*; Capt. A. C. Bott's *Eastern Nights and Flights* also tells a wonderful story of an escape.

⁷ "Night-Hawk," *Rovers of the Night Sky*, 1918, pp. 119-20.

When he arrived in Holland, he was not interned but was sent to England by the Consul-General.

One is struck, indeed, by the entire openness of the way in which the French and British consular agents in Holland received the escaped prisoners, or airmen who had had forced landings in enemy territory and had succeeded in reaching Holland, and arranged for their return to France or England. There was not the least concealment.¹ "At the consulate of France at Amsterdam," says Lieut. Constantini, "like all my escaped comrades, I was received with a simple and affecting cordiality."² Capt. Mézergues, another escaped French airman, tells how the Consul at Rotterdam sent him on to the French military *attaché* at The Hague, who saw all the escaped prisoners on their arrival and called them "*mes évadés*."³ Both these officers were sent back to France *via* England. Escaped British officers were similarly assisted; many of them reported themselves also at the British Embassy at The Hague.⁴ It was reported by a press correspondent at Copenhagen on 12 April, 1915, that three Belgian non-commissioned officers who had escaped from the German prison-camp at Husum and succeeded in reaching Esbjerg (Denmark), had been provided by the Belgian Consul-General with tickets and money to enable them to reach France.⁵ No question appears to have arisen as to the right of the various consular agents concerned to act as they did in these cases.⁶

Summary of the conclusions.—As the various cases of abnormal entry of neutral territory (or its equivalent) considered in this chapter are, perhaps, a little complicated, it may be

¹ Escapes of prisoners of war into neutral territory were freely reported in the press of the time. Thus when Capt. A. J. Evans and Lieut. S. E. Buckley escaped from Germany and arrived at Berne on 9 June, 1917, *The Times* correspondent at Berne at once gave publicity to the fact (see *Flight*, 14 June, 1917). These officers, on reaching Switzerland, reported themselves to the British Minister at Berne (see Evans, *The Escaping Club*, 1921, p. 200).

² Constantini, *Chez les Boches et chez nous*, in *La Vie aérienne*, 6 February, 1919, p. 94.

³ Mézergues, *Ma Captivité et mon Evasion*, in *La Vie aérienne*, 14 August, 1919, p. 526.

⁴ See, for instance, Lady Susan Townley, *Indiscretions*, 1922, p. 261. Some of the escaped prisoners went immediately to the British Consul at Rotterdam, instead of reporting themselves at The Hague. See P. O'Brien, *Outwitting the Huns*, pp. 234-7.

⁵ *Daily Mail*, 13 April, 1915.

⁶ When Flight-Commander Hewlett was rescued from a wrecked aircraft by a Dutch trawler in December, 1914, and repatriated after being landed in Holland, the British Government intervened in the matter to the extent of presenting, through the British Vice-Consul at Ymuiden, a sum of £100 to the crew of the trawler. See *The Aeroplane*, 20 January, 1915.

useful briefly to summarise the conclusions set forth above. The cases in question, it should be noted, are those in which a belligerent military airman comes or is brought into relation with some neutral authorities not, as in the normal case, by entering such authorities' jurisdiction mounted in his aircraft,¹ but disembarked or parted from it, and in which he presents himself as a "hospital case," an escaped prisoner, a "crashed" or ship-wrecked airman, and so on. Such an airman is treated as follows in the various circumstances indicated :—²

Marine frontier cases :—

- (1) Brought into neutral port by warship of his own State.—Interned only if deposited there, or if the whole crew of the warship is interned because the ship overstays its permitted period of sojourn.
- (2) Brought into neutral port by enemy warship after being rescued *outside* the neutral State's waters.—Interned only if deposited there (unless there is a special arrangement between the neutral State and both belligerents providing for release), or detained if the whole crew of the warship is detained because the ship overstays its permitted period of visit.
- (3) Brought into neutral port by enemy warship after being rescued *inside* the neutral State's waters.—Interned or detained as in the last paragraph, but, furthermore, the neutral State is probably bound to demand that the airman be handed over for internment even if the warship does not propose to deposit him there.³
- (4) Rescued by (a) a neutral warship, or (b) a neutral military aircraft.—Interned by the State (a) to which the warship belongs,⁴ (b) in whose (neutral) jurisdiction he is landed.
- (5) Rescued *outside* neutral warships by a merchant (or other uncommissioned) vessel or a non-military aircraft and brought into neutral jurisdiction.—*Not* interned.

¹ If he so entered, but subsequently left the aircraft, he is liable to internment. A case of an airman who had parted with his aircraft *in neutral territory* occurred on 12 December, 1917. The British dirigible No. 26 was discovered near Baarn, Holland, on that day, with no crew in it, and on the same day an airman was discovered near Slidrecht and was "supposed to have fallen from the airship." He was accordingly taken to Dordrecht for internment, presumably on the ground that he had entered neutral jurisdiction in the aircraft. If he had entered it on foot, and the airship had drifted over neutral territory unmanned, he would not have been liable to internment (*The Aeroplanes*, 19 December, 1917).

² As already stated, there is no established rule in some of these cases, and the writer, in stating the treatment applicable, gives only his own view of the law of neutrality.

³ The aircraft, if salvaged, should also apparently be handed over to the neutral State for internment if "captured" within its territorial waters.

⁴ If rescued within another neutral State's territorial waters, that State would also have a claim to hold the airman for internment, but it seems to be immaterial which State actually interns him.

- (6) Rescued from his aircraft *inside* neutral waters by a merchant (or other uncommissioned) vessel or a non-military aircraft and brought into the jurisdiction of the neutral State in whose waters the airman was rescued.—Interned.
- (7) Rescued as at (6) but taken into *another* neutral State's jurisdiction.—*Not* interned.
- (8) Saved by swimming ashore (or rescued inside neutral waters and landed in the neutral State) after abandoning his aircraft *outside* neutral waters.—*Not* interned.
- (9) Saved or rescued as at (8) but after abandoning his aircraft *inside* the neutral waters.—Interned.
- (10) Saved or rescued after being attacked in his aircraft inside neutral waters.—Doubtful, but probably not interned.

As regards the aircraft itself, if salvaged by a neutral warship it is interned by the State to which the warship belongs ; in other cases, by the State into whose jurisdiction it comes or is brought.

Land frontier cases :—

- (1) "Crashed" airman escapes on foot into neutral territory.—*Not* interned.¹
- (2) Captured airman escapes on foot into neutral territory.—*Not* interned.
- (3) Sick, wounded, or disabled airman brought into neutral territory in a hospital convoy of his own forces, granted passage by the neutral State.—Interned only if left in the neutral country instead of being carried through.
- (4) Sick, wounded or disabled airman brought into neutral territory in an *enemy* hospital convoy.—The neutral authorities must demand his removal from the convoy and must detain him.
- (5) Captured airman brought into neutral territory by enemy troops seeking asylum.—Must be liberated.

Obligation of belligerent airman entering neutral jurisdiction to give himself up.—Internment presupposes apprehension by the neutral State's authorities, and while a belligerent military airman who has had a forced landing in neutral territory is bound to submit to apprehension by the authorities there, he is under no obligation in international law to seek them out or to take active steps to give himself up. His military duty is, indeed, to escape again as quickly as he can.²

¹ If, however, he so escaped in company with a "body" of soldiers, he would be interned (unless he were a deserter).

² But, while it is the pilot's military duty to escape, it is equally his military duty not to fly into neutral territory in the first instance, and he may be punished by his own superiors for breaking a service regulation prohibiting entry of neutral

Lieut. Birch, who had a forced landing in Holland early in 1915, after a raid on Brussels, succeeded in escaping, disguised as a ship's fireman.¹ He was fully entitled to do so if he could. The action of the two German airmen who, according to the Dutch paper *Handelsblad*, after landing near Oldenzaal on 29 January, 1918, burnt their machine and "departed on bicycles to be interned,"² was an instance of exaggerated concern for the convenience of the Dutch authorities. The two airmen would have been entitled to escape into Germany, unless and until stopped by some one in official authority. That the law of the subject was sometimes misunderstood in the British service also is shown by the tale (probably perfectly true) of an R.F.C. pilot who landed on 27 February, 1916, near Herne Bay, and, thinking he had come down in Holland, went up to a resident and asked, "Am I a prisoner?"³ He apparently thought that it was his duty to surrender, even to a civilian, whereas he would have been perfectly justified in trying to escape.

Requirements of the law of the neutral State.—It may be that a local law or regulation of the neutral State obliges foreigners entering by air to report themselves to police or customs officers, but it is improbable that it would be regarded as overriding the airman's duty to his own State, and no sort of "parole," prohibiting escape, can be created by the mere fact of landing in or entry of neutral jurisdiction. If neutral civilians try to prevent the airman's departure, his military duty would justify him in persisting in his attempt to escape, even if as a result some of the civilians are incidentally injured. Whether he has any right to go further than this and deliberately to kill or wound a civilian who attempted to stop him is, however, very doubtful. It was reported that some Dutch civilians impeded a German aeroplane which landed at Axel in September, 1917, and that the airman threatened to shoot them unless they allowed the machine to depart, which threat had the desired effect.⁴ To have carried out such a threat

jurisdiction. A French official note of 30 April, 1916, stated that an officer-observer who flew inadvertently over Swiss territory on 27 April had been "subjected to military discipline"; and it was reported in the same month from Berne that a German aviator who recently violated Swiss territory had been dismissed from the service (*The Aeroplane*, 3 May, 1916).

¹ J. T. B. McCudden, *Five Years in the R.F.C.*, 1918, p. 75.

² See *The Aeroplane*, 6 February, 1918.

³ See *Daily Mail*, 1 March, 1916, and *The Aeroplane*, 8 March, 1916, where it is stated that the story is well founded.

⁴ *The Times*, 27 September, 1917. See some other cases in Rolland, *Les Pratiques de la Guerre aérienne*, in *Revue de Droit Int.*, 1916, p. 583.

would probably have amounted to murder or manslaughter, and the airmen, if they had carried it out and had, nevertheless, failed to escape, would probably have been open to a grave criminal charge. The question is, however, one for the local or domestic law, and it is not possible to say what the exact position under that law would be. To resist persons in authority, and still more to wound or kill them deliberately, would be a still graver offence. Under no circumstances could such action be justified, and the airman's duty under military law to his own State must be regarded in such circumstances as overridden by his obligation, arising under international law, to submit to apprehension by the neutral authorities (who may be, e.g., soldiers, gendarmes, coast or frontier guards, customs or police officers) and to internment. The action of the occupants of a British seaplane which, it was reported, was discovered by Danish fishermen near the coast at Nebel on 25 March, 1916, was perfectly correct in this respect. They made every effort to get the machine to rise, but when Danish soldiers, warned by the fishermen, put out in a boat to the seaplane, they surrendered.¹ To have resisted would have been a grave infringement of Danish sovereignty. In all cases, apart from any action taken against the airman himself by the neutral authorities, the neutral State would have ground for protesting to the belligerent State concerned against the initial trespass and the aggravation of it, in varying degree, by the act of the airman in attempting to escape from its consequences.

Observation of belligerent forces, etc., from neutral atmosphere.—The closure of neutral atmosphere to belligerent military aircraft is not sufficient to preclude the use of that atmosphere for a purpose which might gravely damage a limitrophe belligerent country's military interests. If it were possible from within neutral jurisdiction to watch the military preparations, movements and defences of one of the belligerents, a private aircraft flying along or near the frontier could observe in security all that was going on and would not be guilty in doing so, and in reporting what it observed to the other belligerent, of any contravention of the existing laws of neutrality. The objections to such aerial observation from within the safe sanctuary of neutral jurisdiction are obvious, and for this reason the present writer proposed, in his code published

¹ *Flight*, 6 April, 1916; *The Aeroplane*, 5 April, 1916; both quoting from the Danish *Foehrer Zeitung*.

before the war, that a neutral Power should be bound "to exercise such vigilance as the means at its disposal permit to prevent its atmosphere from being used for the purpose of observation, on behalf of one belligerent, of the movements, defences, etc., of the other." The principle of this provision was accepted by the Commission of Jurists at The Hague in 1923, and Article 47 of the Air Warfare Rules drawn up by them reads as follows :—

Art. 47.—A neutral State is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements, operations or defences of one belligerent with the intention of informing the other belligerent.

This provision applies equally to a belligerent military aircraft on board a vessel of war.

Although there is no record in the great war of the use of neutral atmosphere for aerial observation on behalf of a belligerent,¹ a case did occur which shows the danger to which neutral aircraft may be exposed if they ascend or fly on a frontier where such observations would be possible. At the beginning of October, 1918, a Swiss military observation balloon stationed at Miécourt was attacked and destroyed by a German aeroplane, and the observer, Flight-Lieut. Flury, was burnt to death. The balloon was clearly marked with two large Swiss flags and two large Federal crosses on the sides. Germany at once apologised for the incident, which was due to mistake, and promised to hold an inquiry into it.² In a note appended to an extract from Reuter's Berne report of 7 October, 1918, upon the case, one reads in a technical journal : "It is an interesting point as to whether the inspection of a belligerent country's territory by a neutral balloon observer is or is not a violation of international law."³

Under Article 47 of the Air Warfare Rules it would be a failure in neutral duty if a neutral Government did not prevent aerial observation from within its jurisdiction of one belligerent's movements, etc., for the benefit of the other. In the Miécourt case, however, a Swiss military aircraft was concerned, and while there may be practical reasons (such as the

¹ There may, however, have been cases of signalling to aircraft from neutral jurisdiction. At any rate, one suspects that there was some concrete reason for the fact reported unofficially in October, 1917, that the Christiania (Norway) State Council prohibited the unauthorised use of flags, semaphores, lights, fireworks, or other means suitable as signals under such circumstances that they could be observed from the sea or by airships (*Flight*, 1 November, 1917).

² Mortane, *Histoire illustrée de la Guerre aérienne*, i. 479.

³ *The Aeroplane*, 16 October, 1918.

very danger of mistake which did, in fact, here arise) against stationing a neutral military aircraft in such a place, it is not to be conceived that the observation was carried out for a belligerent's profit in any way, and the rule in Article 47 would therefore not apply.

Proposed aerial coastal belt.—A proposal which was put forward by the Italian delegation at The Hague in 1923 may be conveniently mentioned in the present chapter. It would have given any State, belligerent or neutral, the power or option, at its discretion, to enlarge its jurisdiction to take in the atmospheric space along its coast (not, of course, on its land frontiers) up to a distance of ten miles seaward, and to notify other Powers accordingly at the opening of hostilities. Two advantages would have resulted from the proposal. In the first place, it would have enabled belligerents to keep neutral aircraft at such a distance that observation of naval bases and coastal defences and aerodromes would be impossible. In the second place, it would have saved neutral States from the possible and damaging consequences of air combats carried on at so short a distance as three miles—the ordinary territorial water belt—from their shores.

The proposal failed to commend itself to the majority of the Commission. The difficulties which would have arisen from a difference in the widths of the maritime and the aerial belts were felt to be so formidable as to condemn the proposal. A result of this difference would have been to leave around neutral coasts a seven-mile zone (between the three-mile and the ten-mile limits) in which submarines (or other belligerent warships) would have been free to operate against their enemy's shipping without danger of attack from the opposing aircraft. In a combat, again, between an aircraft and a warship, the latter could have withdrawn within the ten-mile limit and therein have continued its warlike action, while the aircraft would have been forbidden to follow it or, presumably, to attempt any assault from outside the ten-mile line against the warship within that line.

The proposal was open, finally, to the objection of the principle that it involved a departure from the hitherto accepted conception of aerial jurisdiction as appurtenant to territorial jurisdiction and as extending only to the atmospheric space above the land or water where such jurisdiction exists.

CHAPTER XXI.

NEUTRAL VOLUNTEERS AND NEUTRAL SUPPLIES.

The forms which neutral assistance may take.—Of the four kinds of assistance which a neutral people, whether corporately and officially as a State or privately and individually as trading companies or persons, can render to a belligerent, one, the furnishing of monetary loans, presents no features specially marked with an aerial character. Another and very important form of assistance—that which more particularly relates to neutral transport and especially to the carriage of munitions or *personnel* for a belligerent, the running of blockade in his interests, and the rendering of that kind of service which is known in maritime law as *l'assistance hostile* or “unneutral service”—is the subject of a separate chapter. Of the two remaining forms, viz. the taking of armed service by neutral subjects in a belligerent's ranks and the furnishing to him of war supplies by neutral contractors, the records of the air warfare of 1914-18 provide us with many examples. Neutral volunteers served in large numbers in the belligerent forces, and aircraft and the materials and parts of aircraft were supplied to belligerents on a considerable scale from neutral sources. Unfortunately, no concrete case arose of the supply *by air* of aircraft consigned from neutral jurisdiction to a belligerent and for the settlement of this difficult and important, question we have, therefore, to rely upon the analogy of maritime practice and the general principles of international law.

Service of officers of a neutral State's forces with a belligerent.—It is a long-established rule of neutrality that a neutral State must not itself supply either troops or munitions to a belligerent. It is not sufficient in this matter to be impartial; the neutral State must rigorously set its face against helping at all. It must not allow a belligerent to organise recruitment within its jurisdiction, as, e.g., by setting up

recruiting offices.¹ It need not, indeed, interfere with the activities of a belligerent's diplomatic or consular agents in the direction of assisting their country's reservists to return for service or sending home volunteers with a like object. But it must not actively encourage the promotion of belligerent interests in this or other ways. Strictly, a neutral War Department should decline to accept the resignation of its officers' commissions (whether in the regular or auxiliary forces, or in the reserve of officers) in order to set them free for belligerent service. In practice, however, it is customary to overlook the reason for resignation in such circumstances, provided it is not too openly paraded and that the resignations themselves are not too numerous; and, in fact, ex-officers of neutral States' services are to be found serving in the belligerent forces in most wars. In principle the rule and its relaxation should be equally applicable to non-commissioned ranks, but in their case there can be no question of resignation, since enlisted men normally serve for a fixed period of engagement and cannot resign, as can officers. The question is hardly likely to arise in other cases than those of officers. In the great war, a well-known Norwegian airman, Lieut. Trygve Gran, who took service in the British Flying Corps, was ordered by his Government to resign his Norwegian commission.² A few of the American citizens who served in the French aviation while the United States was neutral, appear to have held commissions in their State Guard³ and they, too, should strictly have resigned.

Neutral subjects in belligerent service.—A neutral State's responsibility is not engaged by the action of its nationals, other than serving officers of its forces, in joining a belligerent's army, navy, or air force as volunteers. A large number of neutral subjects served in the war of 1914-18. To the knight-errants of the countries which were not at war, service in the air forces seems to have had a particular appeal. How many

¹ It is stated in *The Aeroplane*, 20 January, 1915, but the source of the information is not given, that: "The German military authorities are advertising in the Swiss papers for aviators. They are offering high salaries." The report was most probably incorrect, but there would have been nothing contrary to the Neutrality Convention of 1907 in Germany's trying to obtain in this way the offers of Swiss volunteers to serve in her military aviation, and in Switzerland's permitting the advertisements to appear, provided always that nothing in the nature of a recruiting office was set up in Switzerland.

² *Flight*, 22 March, 1917, from *Dagblad*, Christiania; *The Aeroplane*, 21 March, 1917.

³ "Some of the fellows [in the Lafayette Squadron] hold commissions in their State Guard" (*War Letters of Edmund Genet*, 1918, p. 281).

American citizens joined the British flying service it is impossible to say, for it was always easy to forget one's place of birth in filling up an attestation paper and to write oneself down as having been born on the Canadian instead of the United States side of the border.¹ The number who served in the French aviation before the United States declared war is stated to have been over 200.²

The Lafayette squadron.—The first American volunteers were enlisted in the French foreign legion and transferred thence to various flying units. Major Edmund Gros, who was one of the organisers of the American squadron in the French service, has described the difficulties which were encountered when it was proposed to collect the American airmen into such a squadron, in the spring of 1915. "This grouping together of Americans at the front in a fighting unit brought up a delicate question of international law," he states, "and in face of America's jealous neutrality the French Minister of War did not seem inclined to sanction this proposition." After some discussion, however, "the conclusion was that there existed no international law which forbade Americans from enlisting individually in a foreign army—as long as the recruiting was not carried out in America." The various American aviators in the French army were then grouped together in an "Escadrille américaine" commanded by a French officer, with a French second-in-command. Subsequently, as a result of Count Bernstorff's protest against the presence in the French service of a unit which was professedly American in character,³ the name was changed, first to that of the "Escadrille des Volontaires" and soon after (November, 1916) to "Escadrille Lafayette." Nothing was changed, however, save the name, and the squadron under its new title continued to serve under the French flag until, upon the American declaration of war, it became the 103rd Pursuit Squadron of the U.S. Air Service. The term Lafayette Squadron was used to signify generally the membership of American airmen in the French flying service, whether in the Escadrille Lafayette or in the French

¹ See E. M. Roberts, *A Flying Fighter*, 1918, p. 9.

² Preface by Major E. Gros to J. N. Hall, *High Adventure*, 1918.

³ In the French official *communiqué* of 15 October, 1916, express reference was made to Adjutant Lufbery "of the American Squadron." When the United States became a belligerent, Germany could not refrain from making reference to the aid already given to the Allies by the American airmen in the French service. The German official report of 8 April, 1917, spoke of the heavy air losses of the enemy, "including the Americans who were in the French air service for a long time prior to their country's declaration of war."

squadrons. The American volunteers did not swear allegiance to France and did not lose their American citizenship.¹ When members of the corps were cited in French army orders, the *citations* refer to them as "citoyens Américains engagés au service de la France," or "citoyens Américains volontaires pour la durée de la guerre."²

Sale of neutral Government matériel to belligerents.—A neutral Government which itself supplied a belligerent with war material would be guilty of a grave infraction of the law of neutrality. It must not, for instance, sell surplus aircraft or aircraft parts to a friendly Power that is at war.³ This rule presents no difficulty, but the question becomes more complicated when an intermediate stage in the transaction is introduced. Suppose a Government is normally accustomed to sell its surplus aircraft (or any other munitions) to a commercial company, which has a contractual right to dispose of them to the best advantage; and suppose that that company sells them to a belligerent country, the Government which sold the stores originally being neutral. Would such a sale be an infraction of neutral duty? The answer is not easy. If the company simply "post-officed" the stores, or still more, if it merely acted as agent on commission for the selling Government, the transaction would come perilously near a direct sale by the neutral to the belligerent Government. If, on the other hand, the company worked up the *matériel* in some way, by putting it through a process of reconstruction or substantial

¹ The particulars here given are taken from the preface by Major Gros to the book by J. N. Hall, *High Adventure*, 1918, and from J. N. Hall and C. B. Nordhoff, *The Lafayette Flying Corps*, 1920, i. 4, 36-9. The latter work, in two handsome volumes, and the two volumes entitled *New England Aviators*, 1919, published by the Houghton, Mifflin Co., give a wealth of information upon the Lafayette Squadron. Further particulars of the American airmen and their work will be found in the history by E. C. Parsons, *L'Histoire de l'Escadrille La Fayette*, which appeared in *La Guerre aérienne*, 1918-19, and in the following memoirs: J. R. McConnell, *Flying for France*, 1917; Stuart Walcott, *Above the French Lines*, 1918; C. B. Nordhoff, *The Fledgling*, 1919; E. V. Rickenbacker, *Fighting the Flying Circus*, 1919; C. D. Winslow, *With the French Flying Corps*, 1917; Elmer Haslett, *Luck on the Wing*, 1920; W. A. Wellman, *Go, Get 'Em*, 1918; G. J. Biddle, *The Way of the Eagle*, 1919.

² See, for example, *La Guerre aérienne*, 19 July, 1917, pp. 563, 567.

³ It was reported unofficially in March, 1915, that the Italian War Office had granted permission for the export to the French Government of a few examples of the 300 h.p. Caproni biplane. Apparently, however, the machines were never delivered (see *The Aeroplane*, 29 December, 1915). If the machines were Italian Government ones, the supply of them would have been a grave breach of neutrality. If, however, they were contractor's stock and the Italian War Office only intervened to remove a prohibition of export of aircraft which might have been required for the home service, it does not appear that Italian neutrality would have been prejudiced by the supply.

repairs, the case would not be very different from that of manufacture *ab initio* in private workshops and the sale to the belligerent could not well be regarded as open to objection. Everything depends upon the facts in any given case, and it is not possible to lay down a general rule that will apply in all possible circumstances.

Sale of matériel by a belligerent to a neutral Government.—

It is no infraction of neutrality for a neutral Government to obtain war *matériel* from belligerent sources. The Dutch Government made a large purchase of guns from the Skoda works in Austria in 1915, and in October, 1917, it was reported that twelve large aeroplanes ordered for the Dutch army had arrived at Bentheim (Hanover), and were there to be taken over by Dutch flying officers.¹ The purchase of munitions, even from a belligerent Government itself, does not appear to be prohibited by any rule of international law. During the late war Great Britain transferred a number of aeroplanes to Chile as part consideration for the release by that country of a warship which was being built to her orders in England and which Great Britain required as an aircraft carrier. The transfer was nominally a gift; really it was a case of barter or exchange that was part of the larger transaction of a sale.²

Purchases by a belligerent from neutral contractors.—It has long been an axiom of international law that a State's neutrality is not prejudiced by reason of its nationals' supplying munitions of war to a belligerent. The domestic legislation of most States permits or, at any rate, refrains from penalising such purchases and sales. It is true that the amazingly wide and ill-considered provisions of the British Official Secrets Act of 1920 appear to prohibit the supply of munitions of war to foreign States even in a time of the profoundest peace, but it is unlikely that those provisions will be ever anything but a dead letter. The common law of England does not prevent a British armament firm from selling its wares to a belligerent with whom this country is not at war. It is so also in the United States. The diplomatic note which that country addressed to Austria on 12 August, 1915, stated that:—

“The United States has always depended upon the right and power to purchase arms and ammunition from neutral nations in case of

¹ *The Times*, 3 October, 1917, quoting from the *Handelsblad*, Amsterdam. The Germans do not appear to have parted with any particularly valuable machines; at any rate it was stated in the Dutch press that those supplied were very inferior. See *Flight*, 24 October, 1918.

² *Flight*, 11 July, 1918

foreign attack. This right, which it claims for itself, it cannot deny to others."¹

The great war witnessed the application of this doctrine of neutral freedom of supply upon an altogether unexampled scale. The United States became to a great extent the arsenal of the Allies. Not only guns and shells, but the machine-tools, gauges, micrometers and measuring devices which enabled Great Britain to organise the mass production of munitions, were obtained from America. The United States' engineers and machine-tool makers were mobilised, to all intents and purposes, on the side of the Allies. The country became a hive of war industries. By the autumn of 1916 Great Britain was spending some two million pounds sterling a working day in the United States.² That Germany was not spending a similar amount there was due in no wise to any prohibitory law of neutrality but simply and solely to the certainty that the British fleet would have intercepted her purchases. As it was, Germany bought all she could in the way of war material in Switzerland and Scandinavia. One firm near Zurich erected an important factory to manufacture fuses and grenades for her, and the Schaffouse Company are stated to have delivered to Berlin 300 engines for submarines by the end of 1916.³ There is, indeed, on record an extraordinary case of the supply of war *matériel* to a country which was actually at war with a country allied to that to which the supplier belonged. The German firm which manufactured the famous Albatross aeroplanes appears to have sold some of these machines to Italy, which was then at war with Austria, Germany's ally, but not with Germany herself. The director who was personally implicated, Herr Otto Wiener, was sentenced by a German court in November, 1915, to eighteen months' imprisonment; he had broken the law of his country, but in international law his act would not appear to have involved the neutrality of his State, abnormal though the position was.⁴

British purchases of aircraft and aero-engines in America, 1915.—For aero-engines and, to some extent, for aircraft, Great Britain relied upon the French industry in the early days of the war. Indeed, without the famous French rotary

¹ *The Times*, 17 August, 1915.

² Statement by Mr. McKenna in House of Commons, 19 October, 1916.

³ *Pall Mall Gazette*, 9 January, 1917.

⁴ C. Lafon, *La France ailée en Guerre*, p. 199.

engine, the Gnome, which played an enormously important part in the development of flight, there would probably have been no Allied air forces in 1914. But aircraft were also obtained from the United States, and the British and Russian orders given to the Curtiss Company at Hammondsport, New York, were the occasion for a German protest in 1915. Count Bernstorff contended that the seaplanes which the Curtiss Company were supplying were vessels of war and, therefore, within the terms of Article 8 of the Maritime Neutrality Convention, 1907, and that the United States Government was accordingly bound to prevent their departure. Mr. Bryan replied that the fact that a seaplane was fitted with the means of ascending from the water did not make it a vessel of war; land aeroplanes had landing wheels but would not, on that account, be classed as land vehicles. Both seaplanes and land aeroplanes were flying-machines and, as such, "conditional contraband," and Article 8 of the Convention of 1907 had no application, in Mr. Bryan's opinion, to the case of such machines.¹ A similar view was taken by Holland (Dutch Note of 20 August, 1914). Whether the American answer would have been the same if the aircraft had been dispatched from the United States by air (if that had been practicable) one cannot tell. It would, however, have been illogical for the country which pressed the "Alabama" claims to have taken up the position that their being so dispatched made no difference in the decision.

The "Alabama" rule.—The "Alabama" case established the principle that it is the duty of a neutral State to prevent the departure from its jurisdiction of a vessel of war which has been armed and equipped therein and which there is reason to believe is intended to be used by one of the belligerents against the other. The doctrine which was first clearly formulated in connection with that case is now expressed, in a slightly developed and modified form, in a provision of The Hague Convention on Neutrality in Maritime War; Article 8 of that Convention provides that

"a neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction

¹ The correspondence is given in the *Revue de Droit Int.*, 1916, Documents, p. 117. See also Rolland, *Les Pratiques de la Guerre aérienne*, in same *Revue*, 1916, p. 595; Lacroix, *Le Domaine aérien et la Guerre*, pp. 421-3; Fauchille-Bonfils, *Droit Int.*, 1921, § 1476 (21). A neutral State is fully at liberty, in the exercise of its sovereignty, to prohibit the supply of aircraft; it was reported unofficially in June, 1917, that Sweden had prohibited the export of flying machines, airships, balloons, and parts thereof (see *The Aeroplane*, 27 June, 1917).

which it has reason to believe is intended to cruise or engage in hostile operations against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise or engage in hostile operations, which has been adapted in whole or in part within the said jurisdiction to warlike use."¹

Aircraft and the "Alabama" rule.—If an "Alabama" rule is necessary for warships, it is at least as necessary for aircraft. The prejudice which might be caused to a belligerent's interests by a neutral Government's connivance at or laxness in controlling the supply of aircraft to his enemy is even greater than that which would result from a similar collusion or remissness in regard to the supply of warships. Cruiser depredations are damaging, but at least ships can operate only in blue water. Aircraft are literally as free as air. The range of their activities is wider than that of marine craft in the measure by which the element in which they circulate is more universal and widespread than the sea. A belligerent State with little or no sea-board, or one whose sea-borne commerce is unimportant, has little to fear from the operations of its opponent's cruisers, whatever their source of supply. But every State is menaced from the air. A belligerent country whose neutral neighbours were centres of highly developed aircraft industries would be seriously affected by a rule which permitted its enemy to draw from these neighbouring States supplies of aircraft which could engage in hostilities the moment they emerged from neutral jurisdiction. A position clearly irreconcilable with all accepted principles of international law would be created if neutral territory could thus be made the basis of hostile expeditions.

The difficulty of application.—Some restrictive rule is necessary, and the only question is what it should be. The problem is not an easy one. The difficulty is that whereas in a ship armament is practically all that need be considered in relation to its capacity for cruiser operations, it is not so in an aircraft. One of the most important functions of military aircraft—scouting or reconnaissance—could be performed by an unarmed machine (though usually scouts are armed). Moreover, even if one confines one's attention to its ability to inflict actual military damage, one must remember that something

¹ See J. A. Hall, *Law of Naval Warfare*, 1921, pp. 149-54; A. Pearce Higgins, *The Hague Peace Conferences*, pp. 465-6; Fauchille-Bonfils, *Droit Int.*, ii. §§ 1466-1468; W. E. Hall, *Int. Law*, 1917, § 224.

in this direction can be accomplished by an armed man in an unarmed aircraft. There are on record many cases in which a pilot or observer armed only with a rifle has succeeded in bringing down an enemy machine, and it would be possible for an observation balloon to be destroyed by an incendiary or explosive bullet fired from a revolver.

Total prohibition of neutral supply of aircraft.—If, then, it is considered necessary to provide that in no case shall it be possible for an aircraft consigned by a neutral contractor to a belligerent to carry out hostile acts on the way, nothing short of prohibiting the issue from neutral jurisdiction of any "assembled" aircraft so consigned will suffice. "Assembled" would be interpreted as connoting an aircraft of which the power unit or engine and the fuselage, or the flying part as a whole, were united to form a complete aircraft. To prohibit dispatch by air would not be enough; a seaplane might be towed or taxied to the three-mile limit and flown thence to the belligerent destination, and a loophole should not be left for the evading of the rule in this way.

Prohibition of neutral supply of aircraft fitted for armament.

—A rule so conceived and formulated would impose upon neutral Governments a wide and onerous obligation. It is possible that it would be unacceptable to the generality of States. One must, therefore, consider some less ambitious alternative. One can do so the more hopefully when one considers that, in point of fact, the scouting or reconnaissance which an aircraft might conceivably carry out on its initial trip from the contractor's workshops could equally well be performed by a private aircraft. A belligerent who desired to obtain such information would have other and better ways of obtaining it. One may, therefore, safely ignore the possibility that the damage which an aircraft consigned by a neutral contractor to a belligerent may inflict upon the other belligerent may take the form of scouting or reconnaissance done *en route*. It may also be remembered that the damage which an armed occupant of an unarmed machine could do would not be important in any but exceptionally (for him) favourable circumstances. It is by using bombs, torpedoes, or machine-guns that aircraft normally inflict serious damage on their opponents or objectives.

If, therefore, the restrictive rule be confined to aircraft capable of hostile acts of this normal and more serious kind, and if exceptional cases be ignored, a less comprehensive and

probably more practicable prohibition can be devised. It will not, indeed, be enough to legislate only for aircraft *carrying* bombs, torpedoes, or machine-guns. Munition or armament of this kind might be so carried (e.g. in sealed cases) as not to be utilisable *en route*, in the air; it would then be simply contraband of war and liable as such to seizure. It is also conceivable that an aircraft might start from neutral jurisdiction with no armament or munitions on board and yet might receive them at some secret rendezvous on its initial journey and use them for hostile acts before proceeding to its destination. The "Alabama" itself, it will be remembered, left Laird's yard at Birkenhead without its guns and only took them on board in the Azores. But normally an aircraft could not receive nor use effectively bombs, torpedoes, or machine-guns unless it were equipped with special fittings to take them, and if the formula provides for the case of an aircraft equipped with such fittings, it should meet all practical requirements. It will then be sufficient to impose upon neutral States some such obligation as this, viz. :—

"to prevent the departure from their jurisdiction of any assembled aircraft, destined for a belligerent's use, which is equipped with armament fittings (to take bombs, torpedoes, or machine-guns) and which there is reason to believe is intended to be used for warlike operations."¹

Neutrals and transport of matériel for belligerents.—Except in so far as this obligation to prevent the dispatch of aircraft capable of committing hostile acts extends, a neutral State is not bound to interfere with the transport of munitions purchased by a belligerent from its nationals. It may prohibit or permit such transport at its discretion. In the great war, while still neutral, Roumania refused to allow any supplies consigned from the Central Empires to Constantinople to pass through its territory.² Usually, however, such transport is permitted, where the munitions or other stores are not actually the property of a belligerent.³ If they have definitely become belligerent property, as, for example, where *matériel* is forwarded from one part of an army to another, to allow them to be transported through neutral territory would be a breach of neutrality. Being then belligerent *matériel*, they should be interned.

¹ The question here discussed is left open by Fauchille-Bonfils, *Droit Int.*, ii. § 1476 (21).

² Bormann, in Neumann, *Die deutschen Luftstreitkräfte im Weltkriege*, 1920, p. 518.

³ See Fauchille-Bonfils, *Droit Int.*, ii. §§ 1472-4.

Bulgaria, while neutral, interned certain German army aeroplanes which were flown to Lom Palanka and thence consigned by rail to Constantinople. This was in March, 1915; just previously passage had been allowed to some earlier consignments of similar aircraft, but Bulgaria then apparently awoke to her obligations as a neutral and stopped further consignments.¹ Whether any given *matériel* is Government property or not is a question of fact. The fact that it had been taken into a Government storehouse and brought on Government ledger charge would be conclusive evidence that it was. Until actually delivered into the Government depot or store it would ordinarily be treated as *matériel* under delivery from a contractor and its passage through neutral territory would not be banned by international law (though it might be by a particular neutral State's own law or regulations). The fact that munitions are inspected by a belligerent State's inspectors or agents at a neutral contractor's works or at a neutral port before shipment is not in practice regarded as making them belligerent stores. The commercial transaction of supply is treated as continuing until they reach their belligerent destination.

The Air Warfare Rules.—The obligations of neutral States in regard to the supply and transport of aircraft and aircraft stores destined for a belligerent are defined in three Articles of the Air Warfare Rules. These Articles are :—

Art. 44.—The supply in any manner, directly or indirectly, by a neutral Government to a belligerent Power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft, is forbidden.

Art. 45.—Subject to the provisions of Article 46, a neutral Power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

Art. 46.—A neutral government is bound to use the means at its disposal :—

- (1) To prevent the departure from its jurisdiction of any aircraft in a condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting or utilisation of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent Power.

¹ Bormann, *loc. cit.* Some aircraft from Germany appear, however, still to have slipped through by rail. Reuter's correspondent at Athens reported on 8 July, 1915, that, according to a message from Constantinople, four aeroplanes in sections had recently arrived there, *via* Bulgaria: they were concealed amongst medical supplies (*Flight*, 16 July, 1915).

- (2) To prevent the departure of any aircraft the *personnel* of which belongs to the combatant forces of a belligerent Power.
- (3) To prevent work upon any aircraft designed to prepare it to depart in contravention of the purpose of this article.

On the departure by air of any aircraft despatched by persons or companies in neutral jurisdiction to the order of a belligerent Power, the neutral government must prescribe for such aircraft a route avoiding the neighbourhood of the military operations of the opposing belligerent, and must exact whatever guarantees may be required to ensure that the aircraft follows the route prescribed.

Criticism of the rules.—Articles 44 and 45 are “common form” and merely express in regard to the supply of aircraft rules which are well recognised as governing the supply of munitions of war in general. Article 46 is more important. It imposes upon neutral States obligations which are in three respects more onerous than those arising in regard to the supply of warships. (Other possible minor criticisms of the Article are ignored here.) First, under the maritime rule,¹ the duty of preventing the fitting out or arming of ships within neutral jurisdiction arises only if the neutral State *has reason to believe* that they are intended to cruise or to engage in hostile operations. Article 46 does not qualify similarly the obligation imposed by paragraph 3 (or by para. 2). Secondly, under the maritime rule the sole fact that a ship is manned by belligerent combatant *personnel* would not place upon a neutral State the duty of preventing its departure.² Paragraph 2 of Article 46 imposes upon neutral States the obligation to prevent the departure of an aircraft so manned. Thirdly, the law of maritime neutrality does not require, and, so far as the writer knows, it has never been suggested, that a neutral State is bound to ensure that a ship which is being delivered to a belligerent should avoid a theatre of operations. The final paragraph of Article 46 does impose an obligation to do so upon a neutral State from whose territory aircraft are being despatched. It is difficult to see how such an obligation could, in practice, be fulfilled. How could the neutral State know where, at any given time, the area of maritime operations was? The suggestion in the Report of the Commission of Jurists that an agent of the neutral Government should be sent with the aircraft (to ensure that it avoided areas of operations) is hardly

¹ Convention respecting the Rights and Duties of Neutral Powers in Maritime War, The Hague, 1907, Art. 8.

² See W. E. Hall, *Int. Law*, 1917, §§ 224-5.

likely to be adopted in practice. What could the agent really do to prevent the pilot from taking whatever route he wished? And how could he go at all if the machines under delivery were single-seater fighters?

Article 46 was an attempt to reconcile views so conflicting that to arrive at even the measure of agreement which it represents was a notable achievement. But, obviously, it will require re-consideration in the future. Effective control of the preparation and supply of aircraft is far more difficult to exercise than of ships, and to impose more stringent obligations upon neutral States in the former case is dubious policy.

Neutral aircraft found in occupied enemy territory.—A belligerent may acquire neutral aircraft by other means than purchase. To one of those means—capture and condemnation by a prize court—chapter xviii of this book is devoted. Another is dealt with in Article 31 of the Air Warfare Rules, which provides:—

Art. 31.—In accordance with the principles of Article 53 of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

The Land Warfare Regulations here referred to allowed an occupying army to seize "appliances adapted for the transmission of news, or for the transport of persons or goods, whether on land, at sea, or *in the air*, depots of arms, and, in general, all kinds of war material," even if belonging to private persons, but such property "must be restored at the conclusion of peace, and indemnities must be paid for it." In land war, it should be explained, enemy *private* property is not confiscable; as, however, enemy private aircraft *are* confiscable, any such aircraft seized under the conditions here contemplated would not be restored at the peace, and the rule as to restoration and payment of indemnities would apply only to neutral aircraft.

Angary.—As stated above, Article 31 of the Air Warfare Rules refers to neutral private aircraft found in the enemy's jurisdiction by an invading belligerent. A belligerent State has also the right, founded upon its sovereignty, of requisitioning in certain circumstances neutral private aircraft temporarily within its own jurisdiction. In modern times this right, which is called the right of Angary, has been exercised

only in regard to neutral merchant-vessels, but inasmuch as both in its origin and in its essential nature it is a right applicable to every kind of transport, there is no reason to exclude aircraft from its scope.¹ As defined by Oppenheim,² the modern right of Angary is "a right of belligerents to destroy, or use, in case of necessity, for the purpose of offence and defence, neutral property on their territory, or on enemy territory, or on the open sea. This modern right of Angary does not, as did the original right, empower a belligerent to compel *neutral individuals* to render services, but only extends to neutral property." It has been questioned whether the right to requisition such neutral property outside the belligerent's own jurisdiction and the right to destroy, as well as to use, such property, are properly to be regarded as included in the right of Angary or are not rather distinct rights of belligerency.³ It is, however, the fact that the definition of Angary as given by Oppenheim is that which is generally followed by jurists.

The right can only be exercised in face of an absolute necessity for the use of the neutral property for the belligerent's purposes, and in all cases the neutral owner must be fully indemnified. The fact that the neutral property seized is only temporarily or even momentarily within the seizing belligerent's jurisdiction does not affect the right to requisition it; it is, indeed, to such property that the right primarily applies, for neutral property takes on the character of belligerent property if it belongs to neutral nationals domiciled in a belligerent country,⁴ and would, therefore, be subject to requisition in all circumstances in which the property of belligerent nationals would be so subject. It follows that aircraft belonging to neutral air transport companies might lawfully be requisitioned by a belligerent State during their visits to or passage through its territory, if urgently needed by that State for purposes connected with its defence or offence. The services of the neutral pilots could not, however, be requisitioned. Where neutral railway material is requisitioned by a belligerent, the neutral Power is entitled, by Article 19 of the

¹ See Fauchille-Bonfils, *Droit Int.*, 1921, ii. § 1493 (4), who would allow a *ius angariae* over neutral aircraft.

² *Int. Law*, ii. § 365. See also J. A. Hall, *Law of Naval Warfare*, p. 46.

³ See the exhaustive study of "Angary" by C. L. Bullock in the *British Year Book of Int. Law*, 1922-23, pp. 99-129.

⁴ Oppenheim, *Int. Law*, ii. § 90.

Convention relating to Neutrality in Land Warfare (1907), to retain belligerent railway material to a corresponding extent. No similar right to retain belligerent aircraft has been accorded by convention to neutral States, but it is possible that when the Convention of 1907, above referred to, is revised, the provision relating to railway material may be enlarged to cover aircraft also.

CHAPTER XXII.

AIRCRAFT OPERATIONS AGAINST MERCHANT VESSELS.

The questions for consideration.—The questions which have to be answered in the present chapter are these: Are belligerent military aircraft entitled to "visit and search" merchant vessels and to capture them? If so, are the rules governing similar operations by warships applicable? Must the merchant vessel be boarded where she is encountered, or may she be signalled to proceed to a designated place for visit and search? If she refuses to comply, or to proceed as directed after visit, may she be attacked by an aircraft? And does attack include bombing?

Aircraft operations against merchant vessels.—It would be idle on grounds of principle to deny to belligerent military aircraft the right to visit and search merchant vessels, and that right must carry with it the right also to capture. "The right of visit and search," says Oppenheim, "may be exercised by all warships and military aircraft of belligerents."¹ The right was exercised on some occasions by belligerent aircraft in the late war; reference to these cases is made in a later part of the present chapter. Instances of the bombing of merchant ships by aircraft were not infrequent. In March, 1915, and thence onwards, British and neutral shipping in the North Sea was subjected to attack by German aircraft.² The practice of the war cannot be said to have established any definite principles which would serve as the basis for a rule of

¹ Oppenheim, *Int. Law*, ii. § 415. As regards the right of maritime visit and search, see also J. A. Hall, *Law of Naval Warfare*, 1921, pp. 262-4.

² For the German bombing of the Dutch steamers "Zevenbergen" and "Gravenhage," see *The Aeroplane*, 24 March, 1915, and *Flight*, 21 May, 1915, and Fauchille-Bonfils, *Droit Int.*, ii. § 1493 (3). For attacks on British vessels, see *The Aeroplane*, 24 March, 1915 (especially account of an inquest at South Shields on a seaman who died of shock as the result of the bombing on 17 March, 1915, of the S.S. "Blonde"), 31 March, 1915, and 10 November, 1915. See also C. Lafon, *La France ailée en Guerre*, pp. 146, 153, for attacks in 1916 on Swedish and Dutch steamers, and C. E. Fayle, *Seaborne Trade*, 1923, ii. 93, for attacks on British and neutral merchant ships in the North Sea in the spring of 1915.

law. One finds it necessary to approach the whole question *de novo* and one takes naturally as one's starting point the rules which were embodied in the Treaty signed at Washington in February, 1922, to regulate the operations of surface and sub-surface warships against merchant shipping.

The Washington Rules, 1922.—The Washington Treaty of 6 February, 1922, "for the protection of the lives of neutrals and non-combatants at sea in time of war," contains the following provisions :—

Art. 1.—The Signatory Powers [United States, British Empire, France, Italy, and Japan] declare that among the rules adopted by civilised nations for the protection of the lives of neutrals and non-combatants at sea in time of war, the following are to be deemed an established part of international law :—

- (1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

- (2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated ; and if a submarine cannot capture a merchant vessel in conformity with these rules, the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

Art. 4.—The Signatory Powers recognise the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-18, the requirements universally accepted by civilised nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations they now accept that prohibition as henceforth binding between themselves and they invite all other nations to adhere thereto.

Article 1, it will be seen, is declaratory of the law of nations and lays down the general rules applicable to the operations of all warships against merchant shipping. Article 4 goes further and introduces a new rule of international law, prohibiting the use of submarines as commerce destroyers. It places submarines, as contrasted with surface warships, under a disability, but does not make it entirely clear what the nature of that disability is.

The interpretation of the rules.—The Treaty was not referred to a drafting Committee, and there are certain obscurities in its provisions.¹ It is not an easy Treaty to interpret. What submarines may and what they may not do are not by any means clear. It is only as *commerce destroyers* that they are banned; but they may, apparently, *visit and search and capture* merchant vessels, provided they comply with the rules laid down in Article 1. They may even *attack* a merchant vessel, under the implication of the second paragraph of section 1 of that Article, provided they do not *destroy* her; one cannot see that any other interpretation is possible, in view of the definite limitation of the prohibition to the use of submarines as commerce destroyers. But the whole Treaty is unsatisfactory from the lawyer's point of view and stands in need of either revision or authoritative interpretation by its signatories in agreement.²

The right of deviation.—It is certain at any rate that as the Treaty stands it does not forbid submarines to *operate against* merchant vessels, though commonly considered to do so. In another respect, also, it leaves the position a little indefinite. The second paragraph of section 1 of Article 1 prohibits attack upon a merchant vessel unless she refuses (a) to submit to visit and search after warning, or (b) to proceed as directed after seizure. The apparent implication of this provision is that she may not be attacked if she refuses to proceed as directed *before* seizure. But such a deduction would not be a justifiable one to draw. According to a statement made by the British delegation at The Hague in 1923 and recorded in the Report of the Commission of Jurists, the original wording of the Article was modified for the express purpose of allowing a warship to compel a merchant vessel to proceed to a designated place for visit and search, that is, to "proceed as directed" *before* seizure. The right to impose a reasonable degree of deviation before ever the vessel was boarded was fully recognised and was preserved, according to the British view, in Article 1 of the Treaty.

The American view.—The American delegates at The Hague took a different view. They held that a merchant

¹ See "note" by H. W. Malkin on "The Washington Conference" in the *British Year Book of Int. Law*, 1922-23, pp. 179-82.

² Capitaine de Vaisseau Yvon points out, in an article on "La Guerre aérienne," in the *Revue juridique internationale de la Locomotion aérienne*, June, 1924, that the Washington rules in regard to submarines are self-contradictory: the second paragraph of Art. 1 authorising their employment subject to certain rules, Art. 4 apparently forbidding their employment.

vessel should be boarded where she was encountered, though admitting that departure from this rule might, perhaps, be permitted in exceptional cases of visit and search by warships. But they declined to extend any similar concession to aircraft. Aircraft, in their opinion, should in no circumstances be relieved of the obligation to board a merchant vessel before ordering a deviation. "To permit aircraft, with their rapidity and range of flight, to control and direct by orders enforceable by bombing, and without visit and search, the movement of merchant vessels on the high seas, would, in their opinion, give rise to an inadmissible situation."¹

Deviation in the great war.—In was upon this question of deviation before visit that the deadlock at The Hague arose. The same question had, indeed, already arisen in regard to visit and search by warships. Great Britain had adopted the practice, partly in consequence of the German submarine operations, partly in consequence of the size and complexity of the cargoes of the ships which had to be examined, of sending neutral vessels into a convenient port for visit and search.² The United States Government protested against the practice, but the British Government was able to point to precedents for its action in the Russo-Japanese war of 1904-5.³ The disagreement on the question affecting aircraft was thus a kind of prolongation of an earlier difference of opinion, and remained similarly in an unsettled state.

The three arguable questions.—Two other questions which equally demanded settlement do not appear to have been discussed at The Hague at all. These were :—

- (1) whether, *under any circumstances*, a belligerent military aircraft is entitled to attack a merchant vessel before the crew and passengers have been placed in safety; and
- (2) whether, if the answer is the affirmative, "*attack*" includes *bombing*.

The third question, namely :—

- (3) Whether the aircraft must *board* the vessel before ordering her to a given place for detailed search,

¹ For a clear statement of the American view, see Judge Bassett Moore's *International Law and Some Current Illusions and Other Essays*, 1924, pp. 202-6.

² Oppenheim, *Int. Law*, ii. § 421a, refers to the sending in of the ships for *search* only, and appears to imply that visit was conducted on the spot, but this was by no means invariably the case.

³ See Garner, *Int. Law in the Great War*, ii. pp. 292-5; J. A. Hall, *Law of Naval Warfare*, 1921, pp. 264-9.

was discussed at considerable length, but it is submitted that even if it had been decided, the position would still have been left indefinite in the absence of any clear pronouncement upon the other two questions.

The American proposal.—The draft proposed by the American delegation was as follows :—

“ Aircraft are forbidden to visit and search surface or sub-surface vessels without conforming in all respects to the rules to which surface vessels, authorised to conduct visit, and search, are subject.

“ In view of the irregularities to which the use of aircraft against merchant vessels might give rise, it is declared that aircraft cannot deviate a merchant vessel from its course without boarding it ; that in no event may an aircraft destroy a merchant vessel unless the crew and passengers of such vessel have first been placed in safety ; and that if an aircraft cannot capture a merchant vessel in conformity with these rules, it must desist from attack or from seizure, and permit such vessel to proceed unmolested.”

The British proposal.—The draft put forward by the British delegation was a practically *verbatim* repetition of Article 1 of the Washington rules ; it read :—

“ The use of aircraft against merchant vessels must be regulated by the following provisions, which, being in conformity with the rules adopted by civilised nations for the protection of the lives of neutrals and non-combatants at sea in time of war, are to be deemed an established part of international law.

“ A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

“ A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning or to proceed as directed after seizure.

“ A merchant vessel must not be destroyed unless the crew and passengers have first been placed in safety.

“ Belligerent aircraft are not under any circumstances exempt from the universal rules above stated ; and if an aircraft cannot capture a merchant vessel in conformity with these rules, the existing law of nations requires it to desist from attack and from seizure, and to permit the merchant vessel to proceed unmolested.”

The French proposal.—The French delegation proposed merely to say :—

“ Aircraft are forbidden to operate against merchant vessels, whether surface or submarine, without conforming to the rules to which surface warships are subject.”

The effect of these proposals.—The American proposal, it will be seen, definitely forbade *diversion* before visit, the British and French proposals did not. In both the American and British drafts there was left a kind of “ excluded middle ”

between the prohibition of *destruction* before the crew and passengers had been placed in safety, and the prohibition of *attack* except in case of refusal to submit to visit and search or to proceed as ordered after seizure.

No agreement could be reached at The Hague and so the question stands, internationally, at present. What is one to say of the "common law of nations" upon the subject?

The regulation of aircraft operations against shipping.—

One must admit that, for the purpose of operations against sea-borne commerce, aircraft approach more nearly to submarines than to surface warships. Neither the one nor the other can take off a vessel's crew and passengers; the more effective weapon or instrument of coercion of the one and the other—bomb or torpedo—is more likely to involve the vessel's destruction, with its human freight, than is a warship's gun. Should aircraft then be debarred, like submarines, from commerce-destruction, though allowed, like submarines, to operate against merchant vessels provided they comply with the Washington rules? Or should a stricter *régime* still be imposed upon them and should they be forbidden, as apparently submarines are not, to "attack" a vessel which refuses to submit to visit and search, or to proceed as directed after seizure? And should the "attack" that is prohibited be understood to be "bombing attack" only, and should attack by machine-gun be permitted? Finally, should the right to deviate before visit be allowed or banned?

Visit and search and capture by aircraft in the great war.—

Unquestionably the visit or boarding of a marine craft by an aircraft is technically not impossible. In the *Aeroplane* of 4 July, 1917, there will be seen a photograph of a German seaplane floating beside a submarine and a German officer or man standing on one of the seaplane's floats and handing a document to the commander of the submarine. Here, then, was a clear case of visit. It was unofficially reported from Rotterdam on 23 July, 1917, that the Dutch steamer "Gelderland" was stopped by three German seaplanes off the Hook of Holland, and that a German officer went on board and forced the ship to proceed to Zeebrugge.¹ It has been placed on record by Naval Capt. Hollender that the German airship L. 40, after landing on the water, examined a ship's papers, and that the L. 23 surpassed this feat by not only sending a party (in the

¹ See *Flight*, 26 July, 1917.

ship's boats) to inspect the cargo of a Norwegian three-masted sailing ship, but put a prize crew of three on board the vessel, which was then safely brought into a German port, after a voyage of 43 hours in the North Sea.¹

The difficulty of visit on the spot.—Such cases as those mentioned were, however, exceptional. More often the conditions of wind and wave were such as to make visit by aircraft *sur place* impracticable. Then, the only way in which a vessel could be visited or captured was by signalling to her, under pain of bombing, to proceed to some designated spot near land, or, as in the case of the "Wölfchen" hereafter mentioned, to the aircraft's mother-ship. Should this practical difficulty about visit or boarding be recognised as justifying the application to aircraft of a right of diversion before visit which is held, in some countries at least, to apply only exceptionally to visit by warships?

The danger is that, for aircraft, the exception will tend to become the rule. Diversion may become the normal practice, or, at all events, commoner than in ordinary maritime operations; and if it does, an impossible situation may result for neutral merchant shipping. Aircraft, with their superior speed and capacity for reconnaissance, will be able to control the busy sea routes in a way which warships cannot. They can subject neutral maritime commerce to an endless interference such as the strongest belligerent sea Power has never, in practice, claimed in the past. The practical objections which the American delegation raised at The Hague to allowing aircraft to substitute a mere signalled order for an actual boarding seem to the writer to be unanswerable. If the vessel cannot be visited *sur place*, she should be allowed to proceed unmolested.

The bombing of merchant vessels.—But two other questions remain to be answered. Suppose the vessel refuses to submit to visit at all; may she be bombed for the purpose of enforcing submission? And may she be bombed if she refuses, after visit, to proceed to a designated place for further examination? In such circumstances a warship would be entitled to shell the merchant vessel if a warning shot proved unavailing. But

¹ Hollender in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, p. 390. The second case seems to be the one also mentioned by C. C. Turner, *The Struggle in the Air*, p. 249, where it is stated that a Zeppelin captured the Norwegian barque "Royal," outside Hantsholm, by descending to the water and putting three men on board the ship, which was then taken to Cuxhaven, escorted by the airship.

shelling and bombing are hardly the same thing. It is true that the shell which a warship fires may ignite a cargo of explosives in the merchant vessel's hold and may destroy her, as a result, with her passengers and crew. But such a case would be rare. Normally a shell would merely have the result of making her haul to. A bomb, on the other hand, would normally have more serious results ;¹ if of any size, it is quite likely to sink the vessel or burn her to the water's edge, and *ex hypothesi* the aircraft will be unable to rescue the crew and passengers. Recognising these difficulties, one is inclined to suggest that a special rule should be laid down for aircraft and that direct bombing of a merchant vessel for the purpose of compelling her to obey orders should be definitely prohibited. To impose such a restriction, it may be argued, is to deprive the aircraft of its only effective means of enforcing its rights, for directing machine-gun fire on the vessel's deck is no adequate substitute for the warship's power of shelling a recalcitrant merchant-man. That may be so, but it is a disability imposed upon aircraft by circumstances, and an inevitable one if an evil more repugnant to humanity is to be avoided.

Aircraft operating in consort with warships.—Aircraft operating by themselves are contemplated in the preceding observations. Is what has been said applicable to aircraft operating with warships? That co-operation between a warship and a seaplane may be very effective for the purpose of commerce-raiding was established by a remarkable precedent of the great war.

The German S.S. "Wolf," which carried out a cruise during the period from November, 1916, to February, 1918, carried with her the Friedrikshaven float seaplane "Wölfchen," and used this machine on various occasions to hold up enemy merchant vessels. Capt. Moll, of the German Navy, quotes three instances of the kind. The first was on 2 June, 1917, when the "Wolf" was lying at Raoul Island undergoing repairs ; she sighted a ship and sent the "Wölfchen" to overhaul her. The "Wölfchen" dropped a message on the ship's deck, ordering her

¹ So, too, would a torpedo, the use of which by aircraft is quite practicable. Ships were sunk in the Dardanelles by torpedoes discharged from British seaplanes (see Sir F. Sykes, *Aviation in Peace and War*, p. 76, and C. C. Turner, *The Struggle in the Air*, p. 253). A British ship, the *Gena*, was sunk by a torpedo fired by a German seaplane off Aldeburgh on 1 May, 1917 (Admiralty official report, 2 May, 1917), and three more were similarly sunk in the Downs in 1917 (Raleigh, *The War in the Air*, p. 469).

not to use her wireless and to steer south to the German cruiser, under penalty of being bombed. The "Wölfchen" emphasised this order by dropping a bomb 20 feet from the ship's bows, and the vessel, which was the New Zealand ship "Wairuna" (3900 tons), obeyed. The second instance was that of the capture of the American four-master "Winslow" (567 tons), on 16 June, 1917. The two first messages dropped went wide of the ship, but the third, reinforced by a bomb, dropped fairly close, was apparently received, and the schooner obeyed by coming alongside the "Wolf." The third case was on 25 September, 1917, when the Japanese steamer "Hitachi Maru" (6700 tons) was captured. She tried at first to escape, whereupon, after a warning bomb ahead, the "Wölfchen" dropped one close to the ship's side; this blew two men overboard and the ship stopped; the "Wölfchen" circulated overhead while the "Wolf" sent a prize crew on board the captured steamer.¹

Rules applicable to aircraft working with "mother-ship."—

The fact that in such cases as that of the "Wolf" and the "Wölfchen" the aircraft has at hand a warship which can take off the merchant vessel's crew and passengers differentiates combined operations of this kind from those in which aircraft alone are concerned. It does not, however, diminish materially the objections to the bombing of a vessel from which the crew and passengers have not been removed. The result of the bombing may be to kill or mutilate persons on board the vessel, and the possibility that the survivors will be rescued does not justify the relaxation of a rule the humanitarian argument for which still largely holds good. There would, however, be nothing illegitimate in the aircraft's directing the fire of the warship's guns upon the vessel if she refused to obey signalled orders.

Rules applicable to seaplane or flying-boat when floating.—

Another case for consideration is that in which a seaplane or flying-boat is, for the time being, and for all practical purposes, a marine craft. In the great war there were several instances in which, after forced descents, naval aircraft were unable to rise again and navigated very considerable distances on the surface of the water. Suppose in such a case that the floating aircraft falls in with a merchant vessel: do the rules applicable

¹ Moll, in Neumann, *Die deutschen Luftstreitkräfte im Weltkrieg*, 1920, pp. 569-71. An account of the cruise of the "Wolf" is given also in a paper, "The Cruise of the Wolf," translated from one in the *Rivista Marittima*, July, 1921, in the *Journal of the Royal United Service Institution*, February-November, 1922, pp. 140-6.

to aircraft or those applicable to warships govern its actions? A case of the kind occurred in the great war, and was referred to in the Russian official report of 3 April, 1917, which described the capture of a Turkish schooner by two Russian airmen in unusual circumstances. The seaplane was forced to come down at sea, and, while afloat, saw and attacked the schooner, which was abandoned by its crew and thereupon boarded by the two airmen, after they had sunk their disabled machine and transferred their machine-gun and other valuables. They brought their prize safely, after four days' sailing, to Djarligatch, west of Perekop.¹

In this case, it will be observed, the occupants of the schooner abandoned it while it was still seaworthy; their subsequent fate is not recorded but presumably they were satisfied that in taking to their boats they were securing their own safety. No question of bombing could arise, since the aircraft was water-bound, and the case does not appear to differ from the normal one of seizure of an enemy trading vessel by a belligerent warship.

Attack by merchant vessel upon aircraft.—Attack by aircraft upon merchant vessels has hitherto been in question. The converse question of attack by a merchant vessel upon an aircraft must also be considered. It will arise usually in connection with resistance to the exercise of belligerent rights. Under maritime law an enemy merchant vessel has the right to resist visit or seizure and to fire upon a warship which seeks to over-haul her. A neutral merchant vessel has no similar right to offer forcible resistance to a belligerent warship's exercise of its legitimate rights, and makes herself liable to capture and condemnation if she fires upon the warship in such circumstances.² Is the law the same in regard to resistance to belligerent aircraft? If specific restrictions are placed upon the aircraft's resort to bomb-dropping, in order to diminish the danger to the lives of the occupants of a merchant vessel, it is only reasonable to expect the latter to refrain from action which would endanger the lives of the occupants of the aircraft. That an aircraft may be shot down, even by a submarine, was proved by an actual experience of the late war.³ To the

¹ See *Flight*, 12 April, 1917.

² Oppenheim, *Int. Law*, ii. § 181, § 422; J. A. Hall, *Law of Naval Warfare*, 1921, pp. 53, 276.

³ On 23 July, 1916, one of the R.N.A.S. seaplanes had the unique experience of being shot down by a German submarine, off Zeebrugge (Sir Reginald Bacon, *The Dover Patrol*, p. 544).

aircraft in flight the risk from a shell-burst is comparable to that to which a bomb dropped from an aircraft exposes a vessel, and if bombs are banned for the one purpose (the stopping of a merchant vessel by an aircraft), shells should be banned for the other (the escape of the vessel from the aircraft). The use of machine-gun or rifle fire,¹ on the other hand, if permitted on one side, should be permitted also on the other. It is to be assumed that only *enemy*, not neutral, merchant vessels will have the right to facilitate their escape by firing upon a belligerent military aircraft (as upon a belligerent warship).

Attack upon commissioned vessels.—It need hardly be added that only uncommissioned vessels are referred to in the preceding observations. Any commissioned ship, including (e.g.) armed trawlers, converted liners, colliers supplying a fleet, or other auxiliary vessels, may be attacked by enemy military aircraft with bombs or any other permissible weapons or munitions.² The only commissioned ships which may not be so attacked are hospital ships, but it should be added that the Hague Convention relating to hospital ships also provides that the sick-bays of warships in general must, as far as possible, be respected and spared.³ The same rule would apply, in principle, to attack by aircraft as to attack by warships.

Merchant vessels sailing under convoy.—Merchant vessels sailing under convoy of a warship are treated *ipso facto* as offering "forcible resistance" if that warship is an enemy one. When the convoying and convoyed vessels are both neutral the question is a more open one. The (unratified) Declaration of London provided that neutral vessels under the convoy of a warship of their nationality were to be exempt from search, and might not be visited if the commander of the convoy gave to the belligerent commander all required information in regard

¹ As regards the use of machine-gun or rifle fire, see report in *The Times*, 29 November, 1915, that the British steamer "Balgownie," on her way from London to Rotterdam, was attacked by German aeroplanes with rifle and machine-gun fire and bombs; she was not, however, injured. On the other hand, the captain of the steamer "Serula" is reported (early in 1915) to have fired a rifle at some German seaplanes which approached the ship (see C. C. Turner, *The Struggle in the Air*, p. 242). Oberleutnant von Buttler-Brandenfels (*Im Marineluftschiff gegen England*, 1917, pp. 20-4) describes a case in which a Zeppelin was fired upon from the deck of a steamer, which was thereupon bombed by the airship.

² The anonymous author of *Zeppeline über England*, 1916, pp. 110-11, tells how a German airship squadron attacked with bombs at Grimsby the closely packed fishing-fleet, mine-sweepers, and outpost vessels: "they are all in the service of the Admiralty—the U boats' most dangerous enemies."

³ Art. 7, Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare, The Hague, 1907.

to the character of the convoyed vessels and their cargoes. Any necessary examination was to be carried out by the conveying commander and if the latter came to the conclusion, after investigation, that the circumstances justified the capture of any convoyed vessel, he was to withdraw protection from it. The terms of the proposed rule were applicable to belligerent military aircraft meeting convoyed neutral merchant vessels at sea. The Declaration was not, however, ratified, and the former customary international law upon the subject remains in force. Under that law the practice varies. Great Britain has never recognised a right of convoy and has always claimed the right to visit and search neutral merchant vessels sailing under convoy.¹ A similar right would, no doubt, be claimed for belligerent military aircraft.

Aircraft attack upon a convoy.—It by no means follows, however, that a belligerent aircraft would be justified in firing upon a neutral merchant vessel sailing under convoy on the ground that by doing so she was offering forcible resistance. To fire upon her would be to create an awkward "international incident," and a far graver one would result if the warship returned the fire, to protect the convoyed vessel. Unquestionably the proper course where questions of neutral convoy arise is to pursue them through the diplomatic channel. It is a different matter where enemy vessels are concerned. A belligerent aircraft is obviously entitled to attack by all legitimate means the conveying enemy warships; and if as an incident of such attack the convoyed merchant vessels suffer damage, the aircraft commander cannot be held responsible. Deliberately to bomb a convoyed enemy merchant vessel, however, would probably not be justifiable (it being assumed that the bombing of merchant vessels in general was prohibited), for the danger to non-combatant life on board would not be materially diminished by the presence of other vessels. If one of the convoyed vessels refused to comply with a signalled or wirelessly order from the aircraft to fall out and wait for visit and search, the aircraft would be entitled to fire upon her but not, probably, to bomb her.

Merchant vessels in port or harbour.—There remains to be considered the question of aircraft attack upon merchant vessels in harbour or port. In the great war there were many

¹ Great Britain did, however, allow a concession in this respect to the Netherlands in the late war, though at the same time affirming her right to refuse to recognise convoy (see J. A. Hall, *Law of Naval Warfare*, 1921, pp. 272-3).

cases in which attacks of this kind occurred. Russian seaplanes sank ships in Constantza harbour on 23 May, 1917, and on the following day caused fires on two vessels in Braila harbour.¹ Merchant vessels in Bruges harbour were bombed by British naval aircraft in July, 1918.² Ships were burnt in Cattaro harbour by British aircraft on 9 June and 1 July, 1918.³ In the many bombardments of Durazzo by Italian naval aircraft in June, July, August, and September, 1918, vessels in the harbour were sunk or damaged.⁴ In some of these cases the vessels attacked are stated to have been anchored in the harbour, and direct hits upon the ships are mentioned in several instances. One may conclude, therefore, that the vessels themselves were aimed at. Is such direct attack legitimate?

One can only answer in the affirmative where the ships are alongside or close to the dock attacked. It would be impracticable to distinguish between the dock, which is a legitimate objective, and the vessels beside it. It would rarely happen that passengers were on board in such circumstances, and in most cases there would be sufficient notice of the approach of the enemy aircraft to allow the crew to seek shelter on land. Where ships are anchored or riding at moorings in a harbourage at some distance from land the position is different. Vessels so situated should be regarded as coming under the rules applicable to those at sea. Deliberately to bomb, say, a small coasting steamer at anchor, as a German airship bombed the "Franz Fischer" off Hartlepool on 1 February, 1916, with the result that thirteen out of the crew of sixteen were drowned or killed,⁵ is simple brutality, justifiable by no adequate military reason.

¹ See *The Aeroplane*, 30 May, 1917.

² Admiralty official report, 9 July, 1918.

³ *Diario della Guerra d'Italia*, iii. 1775; iv. 6.

⁴ See *ibid.*, iii. 1908; iv. 167, 217, 269, 307, 335, 363, 423.

⁵ See *Flight*, 10 February, 1916.

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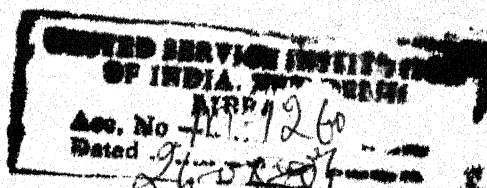
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